THE TRAINING OF AN ARTICLED CLERK p. 66
THE CONTROL OF CINEMAS .. .. p. 67

The Solicitors' Journal

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The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iii.

NOTICE TO SUBSCRIBERS.—The Index to Vol. 73 (Part II), accompanied our last issue and should be returned with the numbers for binding (see advertisement on page XI). The prepaid Annual Subscription to Vol. 74 (£2 12s. 0d.) is now due.

VOL. LXXIV. **Saturday, February 1, 1930.** No. 5

Current Topics: The Retirement of Lord Sumner—The New Lord of Appeal—A Versatile Scottish Judge—Divorce Evidence—Printing Football Lottery Tickets—Not quite *Le Mot Juste*—Discipline by Synod .. 63
Criminal Law and Police Court Practice 65
Contracts with Infants in Restraint of Trade 65
The Training of an Articled Clerk .. 66
The Control of Cinemas 67
Agricultural Counties and Trunk Roads 68
The Duty to Preserve a Family Fortune 68
Company Law and Practice 69
The Property Mart 69
A Conveyancer's Diary 70
Landlord and Tenant Notebook .. 71
Our County Court Letter 71
Practice Notes 72
Points in Practice 73
Correspondence 74
Reviews 75
Books Received 76
Notes of Cases—
In re Mills: Mills *v.* Laurance .. 76
Pastre *v.* Pastre 76
Le Mesurier (otherwise Gordon) *v.* Le Mesurier 77
In re Tomkinson, M'Crea and Bell *v.* The Attorney-General of the Duchy of Lancaster 77
In Parliament 77
Societies 78
Legal Notes and News 79
Court Papers 80
Stock Exchange Prices of certain Trustee Securities 80

Current Topics.

The Retirement of Lord Sumner.

"A CONSUMMATE lawyer," was the phrase applied to Lord SUMNER, whose resignation has just been announced, by so competent a critic as the late Lord HALDANE, and since that opinion was expressed, each judgment delivered by the distinguished judge has only confirmed its truth. No more brilliant expositor of the law than Lord SUMNER has sat in the House of Lords, and his expositions had the additional merit of scintillating with witty and apt phrases that abide in the memory of the reader. A few years ago a collection of Lord BIRKENHEAD'S judgments was issued in a separate volume; the like publicity might well be given to a series of Lord SUMNER'S which are more uniformly brilliant than even those of the ex-Lord Chancellor. Both as an advocate and as a judge, first as puisne, then as Lord Justice of Appeal, and lastly as a Lord of Appeal in Ordinary, he had the gift of repression in a high degree—expression not unmixed with causticity—but it has to be remembered that his judgments, not only in their form, but likewise in their substance, were a perfect exposition of the subject under treatment. As a puisne judge during the years 1909–1912 it has been pointed out that he never once reserved judgment, a remarkable tribute to the rapidity with which he could seize the essential points of a case, and the ease with which he could express in fitting words the result at which he arrived. To his wide knowledge of law he added a wide knowledge of literature which stood him in good stead during the few years after his call to the Bar before he attained a growing practice in the Commercial Court. This literary knowledge found an outlet in the columns of the now long extinct weekly, *The Academy*, and in numberless contributions to the "Dictionary of National Biography." Even to the latest supplement of that invaluable work of reference he wrote one or two of the articles, among others, a striking tribute to the legal genius of his former colleague in the House, the late Lord PARKER OF WADDINGTON. In the ranks of the builders of English law one of the supreme places must be accorded to Lord, or rather, Viscount SUMNER, for it is interesting to recall that his barony for life was transformed some years ago into a peerage with the usual limitations, and at the same time he was promoted to a viscounty.

The New Lord of Appeal.

THE ANNOUNCEMENT that Mr. H. P. MACMILLAN, K.C., has been appointed a Lord of Appeal in Ordinary, in succession to Viscount SUMNER, will be received with universal approbation. It is a little out of the usual, it is true, in that a member of the Scots Bar has been appointed to succeed a representative of English law; but during the last few years, certainly since he held the office of Lord Advocate on a non-party footing in Mr. MACDONALD'S first ministry, Mr. MACMILLAN has almost been more occupied with English than with Scots law. His outstanding abilities as an advocate have been recognised by English clients to an extent never before witnessed in the case of a Scots advocate, the result being that he has been briefed as leading counsel in purely English appeals to the House of Lords time and again, while his appearances on behalf of colonial clients in the Judicial Committee of the Privy Council have been equally, if not more numerous. This is a unique position for a member, however distinguished, of the Scots Bar, who has no technical right of audience in a purely English tribunal. It may be recalled, too, that Mr. MACMILLAN has enjoyed a very large practice in the Railway Rates Tribunal, where his skill in dealing with the complicated questions there dealt with was the admiration of all who were privileged to listen to him. As becomes the son of the Rev. Dr. HUGH MACMILLAN, the distinguished Scottish minister, the new Lord of Appeal is a keen bookman. For some time he edited the *Judicial Review*, and, it may be added, that it was largely through his influence that the library of the Faculty of Advocates became a year or two ago the nucleus of the Scottish National Library.

A Versatile Scottish Judge.

IN SCOTTISH legal circles there has always been a marked leaning to the cultivation of letters. Even before SCOTT electrified the reading world by his spirited poems and still more by the succession of brilliant romances which came with such rapidity from his pen, members of the Scots Bench and Bar had made some valuable contributions to literature, although all these were eclipsed by the genius of Sir WALTER. The latter may truly be said to have created a tradition which was carried on by such men as JEFFREY, LOCKHART, JOHN WILSON (CHRISTOPHER NORTH), AYTOUN, NEAVES, and in more recent times by SCOTT'S most brilliant successor—ROBERT

Louis Stevenson. Happily, the race of literary lawyers in Scotland did not become extinct on the too early death in far-off Samoa of the gifted R.L.S.; and to-day there is on the Bench of the Court of Session one who has well maintained the old traditions, namely, Lord Sands, whose activities, indeed, are not confined to law and letters. Numerous volumes have come from his pen, and one marvels at the striking variety of the subjects on which he has written. Being a stalwart son of the Church of Scotland he has always been one of her valiant champions, and so he has written on "Church Defence" as well as on "Ecclesiastical Law in Scotland." His ecclesiastical leanings have also shown themselves in his books on "St. Paul and his Mission to the Roman Empire" and "The Seven Churches of Asia." But law as well as church history appealed to him, and so we have from him manuals on agricultural and crofter legislation, which again are followed up by excursions into the domain of fiction with "Major Owen and other Tales," and "John Blaw of Castlehill." Now he has made a fresh contribution to our better knowledge of Scott in a work in which he re-tells and amplifies the story of the novelist's first love. Various honours, academic and other, have come to him, but we suppose he must be unique, at all events among British judges, since the Reformation, in having had conferred upon him not long ago the honorary degree of Doctor of Divinity. Truly, a very versatile judge!

Divorce Evidence.

In a recent case before Hill, J., counsel for the petitioner complained that the proprietor of an hotel, where respondent and co-respondent were alleged to have stayed, had placed serious obstacles in his way by refusing the solicitors instructing him due facilities for the collection of evidence. Hill, J., while expressing his sympathy with those who objected to the advertisement of the fact that their premises were used for the commission of adultery, suggested that, nevertheless, they had a legal duty, and that some day one of them might find himself and his whole staff subpœnaed, to the disorganisation of his business. This difficulty does not, of course, arise in those cases, where a husband stays in an hotel with the object of sending the bill to his wife, collects his own evidence, and makes himself *persona grata* with the necessary members of the staff, ensuring that they will have no difficulty either in identifying him on a future occasion, or failing to identify his lady companion with his petitioner wife. The difficulty does or may arise in the furtive visit of the wife and her lover to an hotel, and, if the proprietor is actively hostile, it seems a formidable one. Possibly a private detective may have traced the pair to the hotel. If he enters the reception hall after them—and the slightest suspicion of him will send them off again—he has no right to see the visitors' book, and, indeed, an innkeeper is not now bound to keep such a book, or, if he keeps it, is not bound to show it to anyone who asks to see it. The name given in such circumstances is likely to be a false one (in fact, it must be false for one party if a double-room is booked), and possibly even handwriting disguised, so, unless the detective sees the entry actually made and verifies it, it may not help him. Again, although he may perhaps find out the name of the manager or proprietor, he has no means of finding out those of the reception clerk or chambermaid if they are forbidden or refuse to tell him, and, indeed, he usually has to know the number of the room occupied before he can identify the latter. A *subpœna duces tecum* served on the manager to bring his book with him would not directly assist in proving the adultery, but might pave the way for other subpœnas. These difficulties may appear formidable, but probably would soon vanish in the presence of a capable detective with an adequate secret service fund. That justice should have to be bought by bribery, however, is not satisfactory, and there should be a better solution. The problem is, of course, a more difficult variant of that between the police seeking for information for the purposes of justice and the public objecting to interference, for the private detective has no *locus quo* as a public servant. Then again, the hotel proprietor may be entitled to assume that his lady guests are honest women, and, on that assumption, to protect them from annoyance by busybodies or, perhaps, would-be blackmailers. The fact is, of course, that spying, whether for King or country, or for the purposes of justice, though it may still be necessary in our present imperfect world, remains a dirty business, and the instinct of the public, whether wholesome or otherwise, is to frustrate it.

Printing Football Lottery Tickets.

In *A.-G.* v. *Walkergate Press Ltd. & Others, The Times*, 15th ult., three informations were laid against a company and its two directors for penalties in respect of violating s. 41 of the Lotteries Act, 1823. The section imposes penalties on the sale of lottery tickets (other than those for the Government lottery authorised by the Act) and also forbids any proposal or scheme for the sale of such tickets. There was no suggestion that the defendants had run a lottery themselves, or had any intention of doing so. They were, however, selling cards or tickets with printed lists of the football matches played on a particular day, and each ticket referred to three particular teams, the combinations all being different. The person holding the ticket containing the names of the three teams scoring most goals was to win a prize. Tickets were closed, so that buyers could not know their teams beforehand, and therefore could not exercise skill in choosing them. Obviously these were lottery tickets within the Act, and, by offering them for sale, the defendants were in effect inciting their customers to run lotteries. Horridge, J., following *Ransom* v. *Burgess* (1927), 43 T.L.R. 561, held on the verdict that the section had been transgressed, but that the company could not be a "person or persons" offending against the section, for the reference to offenders being deemed rogues and vagabonds was inappropriate (as decided in *Hawke* v. *E. Hulton & Co., Ltd.* [1909] 2 K.B. 93), and he would not hold that "person or persons" could be used in different senses in the same section. Judgment was therefore given for the company, but, an offence having in fact been committed, the directors had participated in it, and there was judgment for the Crown against them both, but for the one penalty only which the section permitted. The mischief of the printing and sale of such tickets may be regarded as obvious, and the result satisfactory, but, in the present state of the law as to gaming and lotteries, counsel for law-breakers have the widest possible opportunity of sneering at it, which is hardly as it should be. According to Mr. Beyfus, for the defence, "the Government of King George V, having embarked on the betting business by means of the totalisator, and begun to share in the profits of the bookmakers, had apparently determined that the sporting and speculative instincts of the citizens of this country should not be gratified in any way unless they (the Government) shared in the profits—they had therefore raked up an ancient statute—trying to abstract £1,300 from an obscure company and its obscure directors." He might also have added that justice turns its blind eye on the great annual lotteries, called sweeps, on the Derby and Grand National, of which the prizes are fortunes. If the law has to be picked out of a jig-saw puzzle of ancient statutes to punish the small fry, while the large escape, the public are hardly likely to respect it.

Not quite *Le Mot Juste.*

In dismissing the appeal of Lieutenant-Colonel Kynaston against the decision of the Divisional Court with reference to the removal of his name from the Medical Register, Lord Justice Scrutton gave expression to a view that must be entertained by a great many people who have no particular interest in the case itself. Colonel Kynaston was adjudged guilty, in 1922, of "infamous conduct in a professional

respect," by advertising. The learned lord justice observed that "it was a great pity that the word 'infamous' was used in relation to these matters. What the Act meant was serious misconduct in a professional respect, that was, according to the rules governing the profession." "Infamous" is, indeed, far too strong a word to apply to such a case as Lieutenant-Colonel KYNASTON'S, for, so far as we are aware, no one has ever had the temerity to impugn his honour or his character. Parliamentary draughtsmen would hardly use the word nowadays in such a statute as the Medical Act, and we doubt whether it was the best word, even in 1858, to meet professional misconduct which, though it might sometimes consist of a grave crime, might also in some cases be nothing worse than a breach of rules by advertising. This matter of words is not without importance. The use, or the continuance in use, of words that are needlessly strong or offensive may easily defeat the object or conceal the true purpose of an enactment. Justices may refuse to state a case on the ground that the application is merely frivolous, but not otherwise. "Frivolous" is rather a harsh word to apply to an application solemnly made by counsel and supported by strenuous argument. Of course, "frivolous" is not meant to be a term of contempt or reproach; and we have known courteous magistrates who have recited in a certificate of refusal that the application was frivolous "in that no point of law was involved." This, perhaps, softened the blow. Similarly, the use nowadays of such statutory terms of abuse as "idle and disorderly" and "rogue and vagabond," when applied to perfectly respectable people, shows the need of an overhauling of our century-old Vagrancy Act. Words change their meaning. We all know that to say an opponent's remarks are "impertinent" may be quite true, and actually the word should be inoffensive. But it is a sure method of starting a row! We rarely mean at the present day exactly what the word means etymologically, and no man likes to have impertinence attributed to him. Words, even in statutes and in legal terminology, need to be altered from time to time if they have definitely changed in the meaning they convey to ordinary people.

Discipline by Synod.

THE RECENT report in *The Times* of the action taken by the Bishop of Liverpool against three of his incumbents brings into prominence a matter of very real importance as to which so far little has been heard. There has, however, been a movement "behind the scenes" in church circles to secure the adoption of this method of enforcing ecclesiastical discipline, and the action of the Bishop of Liverpool (which is understood to have been in the nature of a test) is certain to be the signal for widespread controversy on the constitutional side. Shortly, what has happened is this. Three Liverpool incumbents declined to recognise the inherent right of their Bishop to insist upon their compliance with his directions in regard to the character of the services in their respective churches. After vainly endeavouring to come to an understanding with the recalcitrant clergymen, the Bishop (Dr. DAVID) summoned a "synod" of the clergy of the Diocese of Liverpool, which was attended by over 300 clergy. The issues were placed before the synod as a jury. The Bishop stated his case and the three clergy concerned submitted a statement, formally protesting against the proceedings as being "extra-legal and probably (as we are advised) illegal." Thereupon the synod resolved by 246 votes to thirty-nine that "In the opinion of this synod the issue between the Bishop and the three brethren above mentioned lies within the obedience which the Bishop is entitled to require, and in refusing such obedience they have excluded themselves from the fellowship of the diocese." The Bishop thereupon formally pronounced that the three incumbents had "set themselves without our ministerial fellowship, and there remain until such time as by giving their lawful obedience they may receive our welcome into it again, which may God grant to our prayers."

Criminal Law and Police Court Practice.

THE GATESHEAD POLICE CASE.—Into the merits of the action of the local authorities concerning the damages awarded against two Gateshead police constables for assault, we do not intend to enter. The important facts, so far as we have gathered from the local press, are that damages were given in the County Court against the two officers; the Watch Committee, after inquiry, exonerated them; the Home Office was willing to make a grant towards payment of the damages if the Town Council decided to do so; but the Town Council declined.

The result seems to have been that local feeling has run high. Police officers are subscribing among themselves to defray the damages, and a mass meeting has condemned the action of the council. All this is deplorable; and our object in referring to it is not to accentuate the unfortunate features of the matter, but rather to call attention to the anomalous state of the law as we understand it.

The watch committee of a borough, though entitled to act independently of the council in controlling the police, is subject to the council so far as finance is concerned. Whether, indeed, the council or the watch committee is the employer of the constable seems never to have been judicially determined; cases can be quoted pointing either way. At all events, if there is a question of paying damages awarded against police constables, it is the council which may, if they think fit, pay them out of the borough fund or borough rate, under s. 226 (3) of the Municipal Corporations Act, 1882, that is, if the officer can be regarded as their officer, agent or servant. (See also s. 9 of the Town Police Clauses Act, 1847, which may be considered as applicable.)

The trouble is, then, that the watch committee, controlling the police with regard to conduct and discipline, and possibly to be regarded as the employer, may decide in favour of the constables and desire to pay damages or costs awarded against them; but the borough council, which includes the members of the watch committee, but which as a council does not exercise authority over the police, can take a different view and refuse to ratify the recommendation in this respect of the watch committee.

Contracts with Infants in Restraint of Trade.

ANOTHER case has recently been decided which increases the list of authorities relating to contracts of service entered into by infants, and in particular to that form of contract entered into by persons engaged in the milk trade. The clause of the contract which gave rise to the dispute in the case in question (*Express Dairy Co. Ltd.* v. *Jackson*, 46 T.L.R. 147) set out in the document, without paragraphs or punctuation, was as follows: "In consideration whereof and of the said wages the said employee doth hereby agree that he shall and will well and faithfully serve the said employer his successors or assigns in the same business and will not at any time within a period of two years from the termination of this contract and service in any way interfere with the trade or the customers belonging to the said business or served by the said employer his successors or assigns nor serve solicit or canvass or cause to be served solicited or canvassed directly or indirectly any of the said customers with milk or dairy produce either for his own benefit or that of any other person persons or company whatsoever nor do any act matter or thing which shall be prejudicial to the said employer his successors or assigns." Soon after attaining his majority the employee left the service of the successors of his employer and entered into the service of a new employer close by, on whose behalf he called upon customers of his former employer and served them with milk. An injunction was sought, but the court

held that the restrictive words were far too vague, indefinite and wide to be enforceable and were particularly to be condemned when they occurred in a service agreement made with an infant.

In considering the reasonableness of contracts of this kind Lord HERSCHELL, in his speech in *Nordenfelt* v. *Maxim Nordenfelt Co. Ltd.* [1894] A.C., at p. 549, adopts the test applied in *Horner* v. *Graves*, 7 Bing. 735, saying: "TINDAL, C.J., said, 'We do not see how a better test can be applied to the question, whether reasonable or not, than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favour of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party can be of no benefit to either; it can only be oppressive, and, if oppressive, it is, in the eye of the law, unreasonable.'"

The main point of interest in the present case seems to lie in the fact that most of the former reported cases of this kind, where infants were concerned, appear to have been decided adversely to the infant employee. Although contracts made with infants must be of such a nature that the court will be satisfied that they are advantageous to the infant, the infant will not be allowed, on attaining his majority, to regard himself as a privileged person and to treat such contracts with contempt. In *Evans* v. *Ware* [1892] 3 Ch. 502, for example, an infant, aged nineteen, signed an agreement with a firm of dairymen carrying on business at Cardiff, that, in consideration of their taking him into their employment as one of their sellers of milk, he would not, after leaving their service, commence business as a vendor of milk in Cardiff, or within a radius of five miles of his employers' place of business, for twenty-four months after leaving their employment. The engagement was determinable by a week's notice on either side. The infant remained in their employment for about two years after signing the agreement and left on his own notice a few weeks after attaining twenty-one. He immediately began selling milk on his own account within the prohibited limits, and the employers commenced an action to restrain him. It was held that the contract was for the benefit of the infant, because he obtained thereby employment or the continuance of employment; and that, although the term for which such employment was certain was a week only, there was sufficient consideration and an injunction must be granted. A step in the direction of the decision in the *Express Dairy Case* (*supra*) is to be observed in *Merriott* v. *Martin* (1899), 43 SOL. J. 717, where the court, following *Evans* v. *Ware* (*supra*), granted an injunction, holding that a similar contract was a contract of service for the benefit of the infant, although it would have been more beneficial without the restricting clause.

It may well be that the factor of infancy will often contribute only in a very small degree towards helping the court to arrive at a conclusion in construing clauses of this kind, but that it is a factor which must be taken into consideration is clear from the view taken by the learned judge in the *Express Dairy Case* (*supra*) and from the observations of COZENS HARDY, M.R., in *Sir W. C. Leng and Co.* v. *Andrews* [1909] 1 Ch., at p. 769. COZENS HARDY, M.R., there said: "So much on the assumption that the defendant was an adult and entered into the contract with his eyes open. But we cannot forget that he was not an adult. He was an infant, and different considerations, it seems to me, may well apply. The defendant, being an infant, entered into a contract which was only good if it was for his benefit, and in considering whether it was for his benefit the onus is upon the plaintiffs to establish that the contract was for the benefit of the infant before they can sue upon it. The infant has not to establish that it was not for his benefit." In the *Express Dairy Case* (*supra*) the clause appears to have been regarded by the court as being so wide and indefinite that any argument based on the question of infancy would seem to have been of value only *ex abundanti cautela* in support of the defendant's case.

The Training of an Articled Clerk.

[CONTRIBUTED]

OF late years a good deal has been said and written on the subject of legal education. It has been pointed out more than once that the ever increasing complexities of the law, and the ever widening scope of the activities of the legal practitioner, make a thorough and efficient course of training absolutely necessary if the future generations of lawyers are to keep up the high traditions of their predecessors. Thanks, in the main, to the untiring activities of The Law Society, much valuable work has been done; but observation would seem to show that there is still room for considerable improvement. Even to-day, numbers of young people are let loose upon the world with liberty to practise as solicitors, whom the writer would not care to entrust with his affairs until they had first practised upon a number of unsuspecting clients.

We are faced with this important question, what does the average solicitor know at the time of his admission? True he has been able to negotiate the examinations of The Law Society with success, and he has served a term of articles varying from three to five years, according to circumstances. But at best he is hardly competent to run a practice on his own, and at worst he is little better than useless. This is, to say the least, a very unsatisfactory state of affairs, particularly in view of the large amount of time and money spent on the training of a solicitor. From the point of view of the general public it is little short of a scandal that incompetent persons should be able to hold themselves out as professional men. It is, of course, admitted that many of the candidates for admission to the roll of solicitors are well trained and highly efficient, and for these the writer has nothing but praise. The point it is here desired to make is, that under the existing system of legal training it is all too easy for a "dud" to fulfil the statutory requirements and become a solicitor.

Without in any way attempting to belittle or disparage the admirable work done by The Law Society with a view to improving the status of the legal profession, it is feared that little real progress can be expected until the present system of preparing entrants has been drastically reformed.

In fairness to those worthy gentlemen who have so ungrudgingly devoted their time and energies to the cause of legal education, it must be admitted that it is one thing to criticise an existing system, and quite another to offer a better alternative. The remainder of this article will, therefore, be mainly destructive criticism, coupled with a few suggestions for amendment submitted with diffidence.

There are two aspects of the articled clerk's training which call for our attention, the practical side and the theoretical side, and the great question which we have to answer is, whether these two branches of his education are properly balanced. In other words, do the authorities burdened with the task of certifying candidates as fit and proper persons to carry on the high calling of a solicitor, perform their functions as they should? And the submission here made is that they do not. This failure is not caused through any fault of their own, but on account of serious defects which lie at the root of our system. For what they are, the examinations of The Law Society are admirable and well conducted. But in the writer's humble opinion, they afford a totally inadequate test of a candidate's fitness to practise as a solicitor. The sin of which they are guilty is the sin of omission. They are excellent so far as they go, but they stop short at a very important point. It is an uncontrovertable fact that it is possible to pass them with a mere modicum of office experience, and a good knowledge of a few standard text-books practically ensures a candidate's success. Such examinations as these are, indeed, very poor tests of a candidate's real value as a practical lawyer.

It is admittedly the business of an articled clerk's principal to give him a thorough grounding in office matters. But unfortunately some of them fail to realise their obligation

towards their articled clerks. In fairness it must be said that many articled clerks are integral parts of the office, and are made to pull their weight, but quite a number seem to be mere nonentities receiving a little work to do now and then, and for the rest being left to their own devices. It is sad to have to say it, but there are many solicitors whose interest in his articled clerk ceases the moment his premium has been pocketed. It may be said that the articled clerk has the run of the office, and if he fails to avail himself of the opportunities of gaining experience thereby afforded he has only himself to blame. This is, however, not the end of the matter. His principal covenants to teach him, in consideration of a premium, and, if he is not able or willing to stick to his bargain, he should refrain from taking articled clerks.

At the commencement of his articles the clerk is generally very keen to learn. He turns up at the office punctually, and does to the best of his ability any work he can get hold of. But if he is left to fend for himself, his ardour quickly cools, and in a few months the golf course and the billiard hall are in great measure substituted for the office. With a mode of training so free and easy, the wonder is that we have such a high standard among solicitors.

There is another point which deserves our attention, the articled clerk's lack of training in advocacy. It is surely wrong that young solicitors should have to gain their experience in this branch of their profession at the expense of unsuspecting clients.

It is now proposed to put forward very briefly one or two suggestions for the amendment of our present system of training articled clerks.

In the first place, it seems to the writer that it would be advisable to supplement the existing solicitors' final by a *viva voce* examination in which a candidate's practical knowledge could be thoroughly tested. This suggestion doubtless appears a somewhat expensive one, but it would afford an excellent means of judging a candidate's competence to practise as a solicitor. Moreover, it is an expedient extensively used in other professional examinations. It would also give the articled clerk a very real incentive to pay more careful attention to office matters, and his principal would feel it more incumbent upon him to see that he did some work.

Another useful amendment of the present system would be a compulsory course in advocacy, run in conjunction with the articled clerk's statutory period of attendance at a law school. Such a course should include fictitious police court and county court proceedings, which would familiarise students not only with the art of advocacy, but with details of procedure and evidence, subjects which are, to all intents and purposes, at present outside his curriculum. Apropos of advocacy, another useful though perhaps rather revolutionary reform would be to give articled clerks who have passed their intermediate a limited degree of audience in police and county courts. They might be allowed to act as juniors to their principals, being entrusted with some of the examination of witnesses, and perhaps a speech. If properly worked out, it is difficult to see how litigants would be prejudiced by such a scheme, and it would certainly insure an improved standard of advocacy from the younger solicitors. It might be argued that the time of the court would be wasted, but it is submitted that any loss thus sustained would be insignificant as compared with the compensating advantages to society as a whole.

If the medical profession were half as lax in its methods of training students as the law, there would quickly be a public outcry against entrusting the lives of patients to men whose efficiency was not assured. By parity of reasoning it must surely follow that no one who has had an inadequate training in the law should be in a position to jeopardise the liberty and fortunes of his clients. No medical student who had not assisted at operations would be allowed to practise as a doctor, and, similarly, no person who has not assisted in police and county court cases should be allowed to practise as an advocate.

The above suggestions are doubtless drastic and revolutionary in character, but it is felt that if some system cannot be devised whereby the public can be assured that, when they consult a solicitor, they are dealing with a reasonably efficient person, then the legal profession bids fair to lose, and lose deservedly, that high degree of esteem and respect in which it is held by the majority of thinking men.

In conclusion, let it be remembered that one incompetent practitioner can do more harm to the profession's prestige than ten sound lawyers can repair.

The Control of Cinemas.

Although the common law has, of course, been little invoked in connection with cinematographs, the legislature has not been idle in making provision for the proper control and management of cinema theatres, and the two principal statutes dealing with the matter are the Cinematograph Act, 1909, and the Celluloid and Cinematograph Act, 1922.

The danger to be apprehended from inflammable films was apparently early recognised, and the Act of 1909 prohibits all exhibitions in which inflammable films are employed, unless they are given in accordance with the provisions of the Act and regulations to be made by the Secretary of State.

The Act itself contains no definite instructions for the management of cinemas, although it insists that exhibitions shall be given only in premises licensed in accordance with the provisions there set out.

County councils (or county borough councils) were empowered to grant licences to such persons as they thought fit, and the Act left it to their discretion to enforce suitable conditions for the benefit of the public.

In order that the councils should have every facility for performing their duty, a power of entry and inspection was given to constables or officers whom they should appoint, so that the authorities concerned have every opportunity of being apprised of any irregularity or breach of their conditions. A penalty of £20, and £5 per day for a continuing offence, was denounced against any person using or permitting to be used any premises in contravention of the Act or of the regulations made thereunder.

This scheme of control would appear to be fairly satisfactory, and one would imagine that the councils and other authorities named in the Act could safely be entrusted with the duty of maintaining reasonable terms and conditions, so that the public may enjoy a measure of safety in case of fire.

There are several decisions under this Act, chiefly relating to the validity of conditions made by councils, and although the object of the legislature in conferring these powers was presumably the protection, safety and general comfort of the public, the decisions are mainly upon attempts of the authorities to impose conditions entirely unconnected with this object.

Thus, we learn that, although a council may prohibit exhibitions on Sundays, Christmas Day and Good Friday (*London County Council* v. *Bermondsey Bioscope Co.* [1911] 1 K.B. 455), there is no reason why a film not passed by the British Board of Film Censors should be vetoed (*Ellis* v. *Dubowski* [1921] 3 K.B. 621).

But one decision more in point is that of *Rex* v. *Burnley JJ.*, *ex parte Longmore*, 80 J.P. 230, where an authority was held justified in imposing conditions against the inducement of children to attend cinemas by the issue of free tickets or presents, and the exclusion of children during an epidemic of some infectious disease.

There seems to be little reason why the present system should be regarded as unsatisfactory, and to encumber the statute book with a further tangle of legislation would scarcely better the position.

The Act of 1922 is far more elaborate, but it does not apply to premises licensed under the provisions of the Act of 1909 (s. 2 (2) (iii)).

"The purposes to which this Act applies" include the keeping or storing of raw celluloid in certain specified quantities, and the keeping or storing of cinematograph film, and s. 1 prohibits the use of premises for these purposes except in accordance with the Act. There is provision for the occupier of such premises to furnish particulars to the local authority, to provide means of escape in case of fire, and for premises forming part of a building to be separated from the building by fire-resisting doors. The schedules contain detailed provisions for safety on premises referred to in the Act, and it would appear that the legislature has done all possible to secure safety for premises used in keeping or storing celluloid and films. Cinema theatres would be affected by these provisions were it not for the contrary direction above, and accordingly the detailed regulations for the public's safety in this case are embodied in regulations made by the Secretary of State (Statutory Rules and Orders, 1923, 983).

Although, in view of the recent disaster at a cinema, there will inevitably follow a cry for another alteration in the law, it does not seem that much more can be done—there are no anomalies to be removed, and our legislation on the subject is characteristically thorough.

Agricultural Counties and Trunk Roads.

It appears from a recent issue of *The Times* that the small County of Huntingdon is in financial difficulties as regards the upkeep of its roads. The inhabitants of this county number only 54,000, and are almost entirely an agricultural community; the income of the county council applicable to road maintenance is, of necessity, low, and it is not unnatural that the county council has in the past jumped at the Government's offers and accepted grants for roads, which, however, were only given conditionally upon the council keeping in repair certain specified roads, including, of course, the Great North Road. As is well known, these specified roads, and in particular the Great North Road, are maintained in excellent order, but only at the expense of the secondary roads, which are just as important to the agricultural community of Huntingdon as the main routes, if not more so. In fact, it is safe to assume that the county does not derive a benefit from, say, the Great North Road proportionate to the immense amount that has to be spent in the upkeep of this popular trunk route. Although the principle that a county council is responsible for the upkeep of the roads in the county in general works fairly enough, yet it will be seen that in certain cases, particularly that of a small agricultural county traversed by one of the big trunk roads, circumstances may call for an exception to that principle, if the small roads that are chiefly used in such a county's only industry—agriculture—are to be kept in a proper state of repair. It may be mentioned that in the County of Huntingdon there is a large amount of sugar-beet grown, and the transportation of this and the sugar produced therefrom must be very much impeded by neglected secondary roads. This instance cannot be an isolated one. No doubt several other small counties similarly situated are feeling the pinch. Further, it must be remembered that it is due to the comparatively recent increase in the use of motor transport, and this alone, that wider and more costly roads have had to be made, and that the expense of road repairing has been greatly enhanced, while the principle stated above is of considerable age. Bearing these facts in mind, it seems not inequitable to suggest that a portion of the contribution of road users might properly be applied to supplement the present grants to county authorities in instances where a case can be shown that, having regard to all the circumstances, the trunk roads for which the county is responsible involve a financial burden disproportionate to the advantages gained by the local inhabitants.

The Duty to Preserve a Family Fortune.

The recent case of *In re Mills; Mills* v. *Laurence*, a decision of Eve, J. (74 Sol. J. 76), is a good illustration of the difference between two classes of powers of appointment, those coupled with a duty and those not so coupled. A power of appointment is not property, nor is it a trust, but if it is coupled with an interest it partakes of the nature of property and if it is coupled with a duty, it is a power in the nature of a trust and cannot be released by the donee. It is a conveyancing device to enable a person to dispose of property in which he has either no interest at all or some interest less than he can dispose of, and some of the older cases turned on the question whether a conveyance by a donee having an interest assured the interest only, or was a good appointment under the power. The Conveyancing Act, 1881, s. 52 (now s. 155 of the Law of Property Act, 1925), enacted that a person who was the donee of a power could release or contract not to exercise it whether he had an interest in it or not, thereby settling what at one time had been a debated point. But it has always been held that the general words of the section were subject to one exception—a power coupled with a duty in the donee was in the nature of a trust and could not be released. In the present case the testator, a member of a famous banking firm, after directing a trust to accumulate the income of his residuary estate for twenty-one years, gave his brother, one of the trustees of his will, a power to appoint the residue and accumulations to such one or more members of his family as "should evidence a desire and ability to maintain the family fortune by replacing the enormous sums of which it had been despoiled by death duties and other taxation," and in default of appointment, to the donee absolutely. The testator died in 1922, and at that date there were living a number of descendants of his father, down to great-grandchildren, any one of whom might, in the fullness of time, display some aptitude for making or at least saving money such as would have satisfied the testator. But in 1928 the donee executed the power by appointing £15,000 to two nieces and the balance to two nephews of the testator, but reserved a power of revocation, and in 1929 he revoked the appointment and purported to release the power. The summons raised the questions whether the release was valid, and whether the donee, assuming it was invalid, could exercise the power in his own favour, being undoubtedly one of the objects. Eve, J., held, in a considered judgment, that the answer to both these questions was in the negative. The main point was whether the power was one coupled with a duty, if so it could not be released, notwithstanding s. 52 of the Conveyancing Act, 1881. He held that the power was clearly one coupled with a duty, not a duty to any beneficiary or class so much as a duty to the testator to preserve and restore the family fortune, diminished by the repeated raids of the Chancellor of the Exchequer. The testator's manifest intention was that the accumulation of the income should continue as long as the law would permit, and that the property should then be appointed to some member or members of the family, who, in the judgment of the donee, would be most likely to continue the process of saving money. The donee, therefore, could not deprive himself of the power by releasing it, but his duty was to wait at least until the twenty-one years of accumulation expired before exercising it. In this the learned judge followed the decisions in *Weller* v. *Ker*, L.R., 1 H.L. Sc. 11; *Saul* v. *Pattinson*, 34 W.R. 561, and *In re Eyre*, 49 L.T. 259, a case of a general power given to trustees. The best way for a testator to prevent the operation of the rule that a power may be released and extinguished is to commit it to his trustees as such, instead of to a beneficiary, such as a tenant for life.

Mr. George D. Steedman, Solicitor, Dalkeith, has been appointed Town Chamberlain in succession to the late Mr. W. Muirhead.

Company Law and Practice.

XIV.

Reconstruction and amalgamation of companies were matters which were considered by the Greene Committee, and certain recommendations were made by the Committee as to alterations in the law which would facilitate these operations.

The first recommendation was that the burdens of *ad valorem* stamp duty on capital, and on the transfer of property, should certainly be entirely done away with, in cases of reconstruction under which at least 90 per cent. of the original capital of the new company is held by shareholders in the old company. This recommendation was acted upon, and the provisions as to relief from *ad valorem* duty appear in s. 55 of the Finance Act, 1927, and s. 31 of the Finance Act, 1928.

The committee followed this up with a recommendation that the court should have power to sanction schemes for amalgamation without the necessity for any of the companies concerned going into liquidation: s. 154 of the Companies Act, 1929, is the outcome of such recommendation, and it has recently been the subject of discussion in the case of *Re Star Tea Company* [1930] W.N. 4.

Before referring at greater length to s. 154, it is, however, necessary to deal to some extent with s. 153, with the fortunes of which s. 154 is inextricably linked.

Section 153 is a familiar friend in slightly altered guise, namely, s. 120 of the Act of 1908, amended so as expressly to cover the ground which was previously covered by s. 45 of the Act of 1908. This section gives the court power to order meetings of creditors and shareholders of different classes to be summoned where a compromise or arrangement is proposed between a company and its creditors or shareholders or any class of them; sub-s. (2) then provides that the compromise or arrangement, if sanctioned by the court, is to be binding, if agreed to by a majority in number representing three-fourths in value, present and voting at the meeting.

Section 154 cannot operate unless an application is made under s. 153; where such application is made and the court is satisfied that the compromise or arrangement is for the purposes of reconstruction or amalgamation, and that under the scheme the whole or part of the undertaking or property of any company concerned in the scheme is to be transferred to another company, the court may, either by the order sanctioning the compromise or arrangement, or by any subsequent order, provide for the various matters set out in the section. These include the necessary vesting order for the transfer of the undertaking, property or liabilities; the allotting or appropriation by the transferee company of the shares, debentures or other interests in that company which are to be allotted or appropriated by that company to or for any person; the continuation by or against the transferee company of legal proceedings pending by or against the transferor company; the dissolution, without winding-up, of any transferor company; provision for dissentients, and consequential matters. Any order made under this section must be delivered for registration to the Registrar of Companies, within seven days after it is made; an omission to deliver renders the company and such of its officers as are in default liable to a continuing fine at a rate of £5 per day (ss. 154 (3), 365). Though s. 153 applies to any company liable to be wound up under the Act (see Pt. X of the Act, ss. 337 to 342), s. 154 only applies to companies within the meaning of the Act, which, by the definition in s. 380 (1), includes any company formed and registered under the Companies Act, 1929, or any company formed and registered under the Joint Stock Companies Acts, the Companies Act, 1862, or the Companies (Consolidation) Act, 1908, unless registered in Northern Ireland or the Irish Free State.

In the *Star Tea Company's Case, supra*, the court was asked to sanction a scheme of arrangement under s. 153, without then making any order under s. 154, though it was intended at a later stage to take advantage of s. 154. After the sanction under s. 153, an agreement was to be entered into between the applicants and the company intended to be the transferee company, after which the applicants would again approach the court for its assistance to enable the amalgamation to be finally carried into effect. It may be noticed that, whereas the scheme originally contemplated the winding-up of the applicant company, this provision was dropped from the scheme as finally approved by the court, the intention being to have a dissolution without a winding-up, in the manner provided by the section.

It was stated to be the intention to make the application under s. 154 by summons, which is the course laid down by Ord. 53B, r. 8 (*h*). A form of order under s. 154 is given in Appendix L to the R.S.C., Form 37, but this will doubtless require considerable amplification and modification to suit the circumstances of each particular case.

It seems that this section may prove of great assistance in the future; a simple order takes the place of a perhaps complicated transfer of property of one sort and another, the shares to be allotted can be allotted direct to the shareholders of the old company, and the complicated and often costly process of winding-up is replaced by an order for dissolution, while dissentients are protected by the court. It will be noticed that the form of order provides that the registrar shall place the documents of the transferor company on the file of the transferee company, and that the files shall be consolidated.

(*To be continued.*)

The Property Mart.

Stability was the keynote of the real estate market during 1929. While the situation was not entirely unaffected by the change of Government early in the year, the high bank rate and the financial chaos during the past few months, there was relatively calm confidence among property owners and investors.

There was a good demand for the gilt-edged freehold ground rent; and the competition among multiple firms led to record prices for shops in good trading localities. In fact, there was a steady maintenance of price levels in all sections of the market, and the realisation of large landed estates was not at all difficult, though it was accomplished in many instances only by the method of first offering a domain as a whole or in blocks, and then dealing with the unsold portions by means of local auctions. In this way many firms disposed of immense areas.

One should not attach too much importance to the reports on the state of the market issued by auctioneers all over the country. Many leading firms appear to be content to keep their opinions to themselves. Unfortunately, however, for the investing and speculating public, the reports that are published only cover, as a rule, the transactions effected by the subscribing firm, and every latitude should be extended to the author in emphasising the importance of the year's trading. It is only natural to show the best side out.

In spite of all one hears of the keen agricultural depression all over the country, farms and holdings have sold very well. There are, of course, indifferent farms and indifferent agriculturists, but a good holding supervised by, and under the direct control of, an experienced farmer, may be expected to pay its way, even if the land cannot be claimed as first class. No doubt the late Government did its share on behalf of the industry, yet it does not seem that the advantages to be derived from de-rating are sufficiently appreciated. As a matter of fact, the annual saving on average farms should amount to from 2s. to 2s. 10d., or more, per acre, which, capitalised, gives the respectable figure of 40s. to 50s. or more per acre. On the best lands it would be considerably more.

Some land is dear at any price, and a great deal of discrimination on the part of the investor or speculator is necessary; but if many of the comparatively small capitalists—the business man with a little money to put by—had, during the last two years bought real property under skilled advice, instead of stocks and shares, they would, at least, possess now something tangible to show for their outlay.

Building land which possesses sewerage and other public services and facilities for development sold well during last year, and a great deal of building, particularly of a small type, continues. Future development naturally depends a great deal on the demand for houses. It behoves builders and speculators, therefore, to take care in selecting their districts for development. Many large areas which, a few years ago, were under cultivation, have been made potential building land by the construction of arterial roads, greatly adding to the amount of frontage available for development.

In his paper, read before the members of the Surveyors' Institution, Mr. W. TOWNEND, an acknowledged authority on the subject, had some pertinent remarks to make on the town planning of built-up areas. He said there were many provisions in the Model Clauses which were quite inapplicable to build-up areas. It was easy to zone vacant land, and to allocate shops to one area, works to another, and limitations of the number of houses to be erected per acre, to others; but when one deals with a built-up area, and finds that long-sighted persons have purchased property in the expectation that houses, for instance, will ultimately become suitable for conversion into shops, and advances have possibly been made for mortgage purposes on valuations based on this assumption, great hardship would be inflicted on owners if provisions relating to zoning were applied in such instances and they were unable to recover compensation from the local authority for the loss of prospective prospects which they had sustained.

Another matter, alluded to by Mr. TOWNEND, is not generally known. As the Town Planning Act stands, a compensation claim is allowed only in respect of property injuriously affected. This, of course, was quite proper when dealing with open land; but when we come to deal with business premises in built-up areas, it is obvious that provision should be made for a claim for compensation for loss or disturbance of business.

A Conveyancer's Diary.

Order of Application of Assets—Property Undisposed of by Will.

An interesting point arising on the provisions of the A.E.A., 1925, with regard to the order of the application of assets in a solvent estate has been before the court several times recently. The question turns upon the meaning of the expression "Subject . . . to the provisions, if any, contained in his will," which occur in s. 34 (3) of the Act, and the meaning of "Property of the deceased undisposed of by will," in Pt. II (1) of the First Schedule.

Section 34 (3) provides as follows:—

"Where the estate of a deceased person is solvent his real and personal estate shall subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule to this Act."

Under Pt. II of the First Schedule the property named first in order is:—

"Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies."

There are two questions which have arisen: (1) Where a devise or bequest has lapsed by the death of the devisee or legatee before that of the testator, is the lapsed devise or bequest to be treated as undisposed of for this purpose? and (2) What amounts to a provision in the will which will have the effect of altering the statutory order?

The first case to which attention may be directed is *Re Lamb* [1929] 1 Ch. 722. There a testator appointed executors and directed that all his just debts, funeral and testamentary expenses should be paid by them as soon as possible after his decease. He then devised certain real property and bequeathed some specific and pecuniary legacies, and directed that the rest, residue and remainder of his real and personal estate whatsoever and wheresoever (if any) should be equally divided between persons therein mentioned. One of the persons to whom the residue was given predeceased the testator, and his share therefore lapsed and went to the next of kin.

Eve, J., held that a lapsed share of residue was properly described as property undisposed of by the will. He held also that the direction for payment of debts was not a provision excluding the application of the statutory order. The lapsed share of residue was therefore primarily liable for the payment of debts and funeral and testamentary expenses, subject to the retention thereout of a fund sufficient to pay the pecuniary legacies.

The question again came before the court in *Re Petty* [1929] 1 Ch. 726.

In that case a testator devised and bequeathed his residuary real and personal estate upon trust for sale and conversion, and after directing payment of debts, etc., out of that mixed fund gave the residue thereof (thereinafter referred to as "the residuary trust fund") as to one-half to his wife, and as to the other half to two daughters in settled shares.

Astbury, J., held that the lapsed share of residue passed as on an intestacy and that the order of application of assets being by the A.E.A. expressly subject to variation by the provisions of the will, which in that case clearly threw the debts, etc., rateably on the mixed fund, these debts, etc., were payable out of that mixed fund rateably and not primarily out of the lapsed moiety.

The learned judge said that he could not believe that the statute intended to interfere with the testator's right to deal with his own estate as he liked, and in that case it was plain that he created a mixed fund for the payment of debts, etc., and there was no undisposed of moiety of the balance of residue until those debts, etc., were ascertained and paid.

Astbury, J., distinguished *Re Lamb*, because, as he said, if the old law were still subsisting, a mere charge of debts, which was all that the direction for their payment in that case amounted to, would not alter their incidence.

The next case is *Re Atkinson* [1929], W.N. 189. There a testator, after appointing executors and trustees, devised all his lands and hereditaments to his brother absolutely and bequeathed all his personal estate to his trustees upon trust for sale and conversion, and upon trust that they should out of the moneys produced thereby pay his funeral and testamentary expenses and debts and legacies, and stand possessed of the residue of the moneys in trust for three persons in equal shares. The testator's brother predeceased him.

Clauson, J., followed *Re Lamb* in holding that the devise to the testator's brother having lapsed, the real estate was "property undisposed of by the will." He held, however, that the provision in the will that the trustees were to convert the personal estate into money and pay thereout the debts, etc., must be regarded before the provisions of Pt. II (1) could be applied, and that the debts, etc., were payable primarily out of the personal estate, not the undisposed of realty.

This case differed somewhat from *Re Petty*, where there was a mixed fund created for payment of debts and the

share which lapsed could not be ascertained until the debts were paid; what lapsed, in fact, in that case, was a share of the balance remaining after payment of the debts.

Without disputing the logic of the decision in *Re Atkinson* (which goes somewhat further than *Re Petty*), it is permissible to point out that where a testator gives all his realty to A, and his personalty, subject to payment of debts, to B, it may be presumed that he charges the personalty given to B with the debts on the footing that A is to have the realty and on that footing only. He does not contemplate a lapse. One would have thought that in such a case the realty should bear the debts before recourse is had to the personalty.

However, the Act is so framed as hardly to admit of a doubt as to the correctness of the construction which has been adopted and, as will be seen, approved by the Court of Appeal, but I should think it unlikely that such a result was ever contemplated by the draftsman.

The question came before the Court of Appeal in *Re Kempthorne*, 168 L.T.Jo. 371

In that case the testator by his will, after devising all his freehold and copyhold property to his brother, bequeathed all his leasehold property and all his personal estate, subject to and after payment of his funeral and testamentary expenses and debts, and the legacies thereby bequeathed to his trustees upon trust for division amongst seven named persons. Two of the seven persons predeceased the testator and their shares consequently lapsed.

It was held by the Court of Appeal, reversing Maugham, J., and approving *Re Petty* and *Re Atkinson*, that the debts, etc., were payable out of the personal estate as a whole, in accordance with the directions in the will, and not primarily out of the lapsed share. Lawrence, L.J., although reserving his opinion, doubted the correctness of the decision in *Re Lamb*.

These authorities are worth bearing in mind when taking instructions for the preparation of a will.

Landlord and Tenant Notebook.

Boundaries of Flats, etc.

The Conveyancing Act of 1881 simplified the task of a draftsman engaged in settling the parcels of a lease; the provisions as to what these include (in the absence of any expression to the contrary), now to be found in the L.P.A., 1925, s. 62, removed the necessity for much verbiage. They cannot, however, be readily applied to leases of flats, offices and the like when questions arise as to the geographical extent of the demise (in the matter of appurtenances and rights appertaining they may be most useful). Four reported decisions have now settled the position as regards external walls and the space beyond them; the question of internal walls, while alluded to *obiter*, is not yet fully covered by authority.

The case of *Carlisle Cafe Co. and Todd* v. *Muse Bros. & Co.* (1897), 67 L.J. Ch. 53, the decision in which is the basis of the other decisions, concerned the top floor of a building which had been let off by the plaintiffs to the defendants. During the term the plaintiffs fixed a large sign to the front outer wall covering part of the wall above the level of the top floor. The defendants removed the sign and the plaintiffs sued (*inter alia*) for a declaration of rights. The court held that the part of the wall in question was part of the thing demised. The judgment, as reported, was very short on this point, and does not refer to any older authority.

In *Hope Bros. Ltd.* v. *Cowan* [1913] 2 Ch. 312, the defendant was tenant to the plaintiffs of the middle floor of a building; he had covenanted to keep the interior in good repair and not to fix any signs, etc., to the exterior without the consent of the plaintiffs; the latter had covenanted to permit the defendants to affix such signs on the outside of the portion of the building they (the defendants) occupied, and, under the terms of the lease by which they held, were responsible to a superior landlord for the maintenance of the walls. The complaint was that the defendant had fixed window-boxes resting on brackets affixed to the wall. The boxes did not project beyond the cornices of corresponding windows on the floor below. As regards the question of interest in the wall, it was argued that the principle laid down in *Carlisle Cafe Co. and Todd* v. *Muse Bros. & Co.*, *supra*, ought to be limited so as not to apply to the case of an intermediate floor; but the court declined to make the distinction and approved and applied the decision referred to, holding that *primâ facie* both sides of the outer wall were included in the demise, and there was nothing in this lease amounting to an exception or reservation.

In the face of these two decisions, only the hope inspired by the existence of a tenant's covenants to use the premises—the first and second floors of a building—for the purposes of dentistry only, and not to exhibit any advertisement not relative to that profession, can explain the litigation in *Goldfoot* v. *Welch* [1914] 1 Ch. 213. The tenant objected to a large cocoa advertisement fixed by the landlord so as to cover part of the outer walls of his rooms; but the argument put forward on the landlord's behalf, that the tenant did not want to carry on dentistry on the outer wall, was unsuccessful and the principle of the *Carlisle Cafe, etc., Case* was again applied.

The limitations of the tenant's rights were demonstrated in *Gifford* v. *Dent* (1926), 71 Sol. J. 83, a case between tenant and tenant. The plaintiff occupied the ground floor, and with it the forecourt of the building; the defendant, who was tenant of the upper part, fixed a large projecting sign which, unlike the window-boxes in the case of *Hope Bros. Ltd.* v. *Cowan*, *supra*, overhung the forecourt. This was held to be trespass. The effect of this and the other decisions appears to be that, while the tenant of an upper flat takes in his demise the external wall, he does not take any interest in any part of a column of air outside which may be vested in his landlord in accordance with the *usque ad coelum* rule. Possibly an occupier of the ground floor immediately adjoining a highway could restrain tenants of floors above from affixing projections, invoking the *usque ad medium filum* rule.

As regards the position of a tenant of rooms concerning internal walls, it was suggested by Joyce, J., in *Hope Bros. Ltd.* v. *Cowan*, *supra*, that some sort of analogy could be drawn with the case of a party wall. As regards London, it could not, without straining the definition, be treated as such for the purposes of the London Building Acts. The question arose, it is true, in *Phelps* v. *City of London Corporation* [1916] 2 Ch. 255, when half the partition wall between a passage reserved by the lessors and part of the demised premises was held to remain vested in them; but while Peterson, J., referred to the *dictum* mentioned above, the actual lease before him, and the plan it referred to, left no room for doubt on the facts of that particular case.

Our County Court Letter.

LIABILITY FOR FUNERAL EXPENSES.

In the recent case of *Bladder* v. *Sandoe*, at Malvern County Court, the plaintiff claimed £38 17s. 6d. from the defendant as executrix of the will of the plaintiff's wife. The plaintiff had been unable to find a will, and—as he intended to take out letters of administration—he incurred a liability to the undertakers for the above sum, which he duly paid. A will was subsequently found, which was proved by the defendant as executrix, and liability for the funeral expenses was disputed on the grounds that: (1) the payment had not been authorised on behalf of the defendant, (2) the plaintiff (as widower) was liable at common law for the costs of the burial, (3) the money

in defendant's possession had been deposited upon an express (and communicated) trust, in favour of the children of the deceased. His Honour Judge Roope Reeve, K.C., remarked that there was nothing mean in the defence, although the estate was ample and the widower received nothing, but the defendant also had no interest in the estate, which she was bound to protect for the benefit of others. The will contained no charge of debts or funeral or testamentary expenses, and the bulk of the estate consisted of money invested in the name of the executrix (the sister of the testatrix) for some unexplained reason. It was clear that the husband was liable at common law for the burial of his wife, but it was equally clear that an executor was liable for the burial of his repositor. In the event of a conflict, a question arose as to which liability prevailed over which right, or which of the two liabilities was the over-riding one. In an administration action (on marshalling of assets) the husband would have been entitled to stand in the place of the creditor whose debt he had paid and to receive payment for a claim which—if put forward by the original creditor—would have over-ridden all others. It was therefore held that, as between the conflicting obligations of a husband and an executor, those of an executor were paramount, and the plaintiff was entitled to judgment. In view of the novel and difficult point raised—and on the assumption that they would not fall on the defendant personally—costs were awarded on Scale C.

This decision followed *In re M'Myn; Lightbown* v. *M'Myn* (1886), 33 Ch. D. 575, in which the plaintiff (an aunt of the testatrix) claimed £230 as money lent, and the defendant (the husband and executor) claimed to retain £17 out of the estate for funeral expenses. The will contained no charge of debts, or funeral and testamentary expenses, and—as the estate was insufficient—the plaintiff contended that the defendant was liable for the burial out of his own pocket. Mr. Justice Chitty remarked that, although the law casts upon the husband the duty of burying his wife, he is not bound to do so at his own costs always. The testatrix had exercised a power of appointment, under a settlement of certain life insurance policies, but—while making the fund general assets for her creditors—she had omitted to mention funeral expenses. The learned judge held that, in such circumstances, it would be too hard to call upon the defendant to bury the deceased out of his own moneys, and he was therefore entitled to retain the amount expended on her funeral. It is to be noted that in the above case the same person filled the two capacities of executor and husband, and the decision was to the effect that the husband's liability as executor overrode his liability as husband at common law.

The position where the will does contain a charge of funeral expenses was considered in *Willeter* v. *Dobie* (1856), 2 K. & J. 647. The testatrix made several bequests, and—after payment of her just debts and funeral and testamentary expenses—she exercised a power of appointment in favour of nieces. The widower had paid £64 2s. 2d. for the funeral, and the defendants contended that the charge in the will was intended to be contingent upon the testatrix surviving her husband, in default of which there was nothing to exclude the ordinary rule that the husband was liable. Sir Page Wood, V.C., held that nothing was given to the nieces until the debts were paid, and that the above charge was not contingent, but rendered the funeral expenses payable out of residue in any event. The plaintiff was therefore entitled to repayment.

Practice Notes.

COMMERCIAL TRAVELLERS' LENGTH OF NOTICE.

An instance of the subtle distinctions which irritate the lay mind occurred in the recent case of *Gough* v. *Russian Oil Products Limited*, at Bristol County Court. The plaintiff claimed £58 as damages for wrongful dismissal, his remuneration having been £4 a week as salary, plus commission at 1 per cent. on the first £1,000 of business, and ¾ per cent. thereafter. Having received one month's salary in lieu of notice, the plaintiff contended that it was an implied term that he was entitled to three months' notice, which was a trade custom and/or a reasonable notice, but the defendants contended that it was an express term that the plaintiff was subject to one month's notice. Evidence was given by a general drapery traveller (a member of the National Union of Commercial Travellers Association) that it was a well-known custom for a three months' notice to be given to or received by commercial travellers, i.e., those engaged in general trades, and petrol was to-day recognised as a commodity. The defendants' case was that there was no custom in the petrol trade to give three months' notice to representatives, and the latter were not known as commercial travellers, as they did not carry samples. His Honour Judge Parsons, K.C., was not satisfied that it was the custom, in that particular branch of industry, for a traveller to receive three months' notice. The custom was neither notorious nor universal, and, as regards reasonableness, there was nothing specialised in the plaintiff's employment, although he had other duties besides securing orders for petrol. The defendants had paid one month's salary and commission, and were therefore entitled to judgment, with costs. Compare two decisions upholding a claim to three months' notice in a "County Court Letter," entitled "Termination of Service Contracts," in our issue of the 26th January, 1929, 73 Sol. J. 56.

THE CONTRACTS OF TURF COMMISSION AGENTS. III.—(*Continued from* 73 Sol. J., *p.* 761).

In the recent cases of *Gilbert* v. *Brewin*, and *West* v. *Brewin*, at Melton Mowbray County Court, the plaintiffs claimed £21 17s. 6d. and £59 1s. respectively under agreements in writing. The defendant had had a current account with the first plaintiff, a certificated bookmaker, but although the defendant had received his winnings he eventually defaulted to the first-named amount. The defendant subsequently resumed betting indirectly with the first plaintiff through the second plaintiff, who was an agent, but, after drawing winnings, the defendant again defaulted to the second amount. The secretary to the National Turf Protection Society had told the defendant that he was in peril of being warned off, and the defendant had replied that, as a racing motorist, he was anxious to avoid the disgrace. The defendant had eventually signed agreements to pay the money, and His Honour Judge Haydon, K.C., held that, although in the first place the claims were barred by the Gaming Acts, the plaintiffs were entitled to the money under the agreements, and judgment was given accordingly, with costs.

BANKRUPTS AND THE COMPANIES ACT, 1929.

The jurisdiction under s. 142 of the above Act is exercised on principles recently illustrated at Hanley County Court. The adjudication took place in February, 1929, but the applicant had not applied for his discharge, as his affairs were not fully wound up. In March the trustee had sold the business to a newly-formed company, but the directors (having paid £7,500 in cash) knew nothing of pottery making, and required the expert knowledge of the applicant, who also knew the customers. The Official Receiver objected that it was contrary to the public interest for the bankrupt to be again enabled to obtain credit, as—although the liabilities were £43,734—the balance for distribution was only £2,945, and the probable dividend was 1s. in the pound. Moreover, the bankruptcy had been due to a claim by the Inland Revenue in consequence of evasion of income tax, and His Honour Judge Ruegg, K.C., refused to grant the application. Compare Practice Note under the above title in our issue of the 30th November, 1929, 73 Sol. J. 793, where there is an example of a successful application of the kind.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Undivided Shares—Entirety vested in One Person as to One Moiety absolutely, and as to the other as Trustee.

Q. 1829. In 1925, A and B were seised as tenants in common in equal shares of a number of freehold houses. By a deed of settlement made in August, 1925, A as settlor, conveyed her undivided moiety to B, to stand possessed thereof upon trust to either permit the same to remain in its then state of investment or (with the consent of A during her life and afterwards at the discretion of B) to sell and convert the same into money and re-invest the proceeds thereof, and it was thereby declared that B should stand possessed of the said equal undivided moiety and the investments for the time being representing the same and the income thereof, upon trust for the four infant children of B. The settlement contains a declaration that the trustee or trustees for the time being thereof should be the trustee or trustees for the purposes of the S.L.A., 1882 to 1890, and also for the purposes of s. 42 of the Conveyancing Act, 1881, and it also provides that the power of appointing a new trustee or new trustees should be exercisable by A during her life and afterwards as by law provided. B with the consent and approval of A has now contracted to sell one of the before-mentioned houses to a purchaser. What steps should be taken by A and B to complete their title? Please refer to any precedents.

A. On the 1st January, 1926, the property was held "at law or in equity in undivided shares." The opinion is expressed that notwithstanding that B was absolutely entitled to one moiety he was a trustee of the entirety within para. 1 (1) of Pt. IV of Sched. I, L.P.A., 1925, viz., as to one moiety for his infant children as to the other moiety for himself. If this view is correct, then, if another trustee is appointed to act with him, he and the new trustee can sell under the statutory trusts. It is a difficult question to say if A has the power of appointment as she was not a person nominated by an instrument relating to the entirety. If the opinion given above that B was a trustee within para. 1 (1) is wrong, then the entirety vested in the public trustee, and he can be divested by an appointment made under para. 1 (4) (iii) by B as the person interested in the whole of the income, as to one-half absolutely, and as to the other half as trustee: *Re Cliff Contract*, 1927, 2 Ch. 94. Under the circumstances it is suggested that A and B should execute a deed reciting the title; that doubt exists as to whether the entirety is vested in B as trustee within para. 1 (1), and if so by whom an additional trustee should be appointed, or whether the entirety is vested in the public trustee, and it is desired to appoint X to act jointly with B as trustee. Then A and B each in exercise of any powers which she and (he?) has appointed B (if and so far as the property is not already vested in him as trustee), and X to be trustees of the property to hold upon the statutory trusts, and in place of the public trustee if the property is now vested in the latter. Any of the post-1925 precedents can be adapted to meet the case. A can of course be appointed if desired.

Vendor and Purchaser—Mis-statement in Particulars as to Land Tax—Condition Negativing Compensation.

Q. 1830. A, the tenant for life under the S.L.A., 1925, has agreed to sell the Blackacre Estate to B for the sum of £12,200, and has paid the sum of £1,220 as a deposit. The property was sold subject to the common form of conditions of sale of the Dorset Law Society, and to certain special conditions, Condition No. 7 of which provided that the property was sold subject (*inter alia*) to land tax. In the particulars of sale land tax was, owing to an error by the auctioneers, given as £13 14s. instead of £30 14s. We assume that B did not make any enquiry as to the land tax before he entered into the contract. B now refuses to complete unless compensation is paid to him, and he claims the sum of £435 which would be the cost of redeeming land tax of the value of £17, i.e., the increase in the amount of land tax due to the error in the particulars. The material part of cl. 10 of the Dorset common form of conditions of sale, which is the only clause referring to errors and mis-descriptions, runs as follows: "The property is believed and shall be taken to be correctly described as to quantity and otherwise, but the vendor does not guarantee and shall not be required to prove the accuracy of any plan or of any statement in the particulars; and the property having been open for inspection, the purchaser shall be deemed to buy with full knowledge of the actual quantities and the state and condition thereof, and in particular as to cultivation, water supply, drainage and as to the state of repair of all buildings and erections thereon. No compensation shall be given or allowed on either side in the event of any error whatever being found in the particulars or special conditions, nor shall the sale be annulled." It is submitted on behalf of A that no compensation can rightfully be claimed by B on account of General Condition No. 10: see "Dart's Vendors and Purchasers," 6th ed., p. 323.

A. Land is presumed to be subject to land tax, and a vendor need not mention it. If however the vendor purports to mention the amount he must do so correctly, and it is considered that a mis-statement as to this outgoing is as much a subject for compensation as are statements in regard to any other outgoing, such as tithe rent-charge: see as to compensation for tithes, *Todd* v. *Gee*, 17 Ves. 273. A condition excluding compensation, if sufficiently comprehensive, as this appears to be, will prevent a purchaser insisting on specific performance with compensation, but if the error is in the opinion of the court of sufficient magnitude he is entitled to rescission: see *Jacobs* v. *Revell*, 1900, 2 Ch. 858, and cases there cited. The vendor can annul the sale under the usual condition for rescission (*In re Terry to White*, 32 Ch. D. 14). Whether the error, having regard to the amount of the purchase money, is sufficient to entitle the purchaser to claim rescission and return of deposit is a difficult question to answer with confidence, and one on which judges might well differ. With some diffidence the opinion is given that the purchaser would not be successful.

Undivided Shares—Leaseholds—Transitional Provisions of L.P.A., 1925—Title.

Q. 1831. In 1906 three sisters and a brother purchased property which was assigned to them by a deed which contained the following statement in the operative part: "In consideration of the sum of £—— paid to the vendors by the purchasers in equal shares." The habendum, however, stated that the property was assigned to the purchasers "as joint tenants in trust for themselves, their executors, administrators and assigns, as tenants in common in equal shares." One sister died in 1924 and a second sister died in 1928. If the purchasers were tenants in common in law immediately prior to 1st January, 1926, it would appear that the transitional provisions of the L.P.A., 1925, apply, and that the property

would vest in the Public Trustee until the appointment of new trustees. If, however, on the construction of the deed of purchase the purchasers were joint tenants in law prior to 1926 (as well as after 1st January, 1926), it would appear that the two surviving children can sell as surviving joint tenants. We shall be glad to have your opinion as to whether the survivor can make a title, or whether new trustees must be appointed.

A. We gather, and for the purposes of this reply assume, that the property was leasehold. We express the opinion that the effect of the assignment was to create a joint tenancy at law and a tenancy in common in equity. That being so, by virtue of Sched. I, Pt. IV, para. 1 (1) (*b*), of L.P.A., 1925, the legal estate is now in the surviving sister and brother, and upon the statutory trusts. Note that this part of this schedule applies to equitable undivided shares.

The two survivors can therefore, in our opinion, surrender the statutory trusts.

Mortgage to a Bank by Deposit—Abstract of Title—Sale—Letter of Release from Bank.

Q. 1832. By a memorandum under hand dated in 1928, A and B deposited the deeds of a freehold farm with their bank to secure all money owing to the bank not exceeding £2,000, and charged the property with payment of all such money. The memorandum was in the usual bank form and contained an undertaking to execute a legal mortgage when required. The farm has a considerable frontage available for building, and it is the intention of A and B to sell this off in plots at about £100 apiece. It is desired to avoid the formal concurrence of the bank in each sale, though the memorandum will remain on foot until sufficient sales have been made to discharge the overdraft.

(1) Is there any justification for leaving the memorandum off the title ?

(2) Assuming that the memorandum should be abstracted, what is the minimum evidence that should be accepted by a purchaser as showing the agreement of the bank to the sale ? (It is suggested that as the bank has no legal estate a letter from the branch holding the deeds, to the effect that the bank assents to the sale, would suffice.)

A. (1) No. A conveyance by A and B would not over-ride the equitable charge: L.P.A., 1925, s. 2 (3) (i), (4), and s. 10 (1).

(2) Any reasonable purchaser would accept such a letter.

The whole position is discussed in "Everyday Points in Practice," Part V, s. 7, Cases 2 and 3, at p. 326.

The letter should state that the property is released.

Executor—Trustees—Unmarketable Shares not Fully Paid—Distribution of Assets.

Q. 1833. A testator instructed his trustees to convert his small estate into money and to pay his widow 30s. per week out of the nett proceeds. The trustees have converted all marketable assets and have probably got sufficient cash in hand to pay the widow the 30s. per week for the rest of her life, but they hold unmarketable cotton mill company shares on which there is an uncalled liability and a call will probably be made in the near future, and if it is made the cash in hand will barely meet it. Are the trustees legally entitled to continue to pay the 30s. per week until a call is actually made or ought they to keep the fund intact to meet the contingent liability ? My opinion is that they can disregard the liability until a call is actually made.

A. It would seem that executors are not bound in distributing their testator's estate to retain assets in their hands to meet a liability of which they have notice unless the liability amounts to a debt. Subject to s. 75 of the Companies Act, the liability for future calls is not a debt. Possibly, however, they could find someone to take the shares over at a nominal sum. See *Whittaker* v. *Kershaw*, 60 L.J., Ch. 9, and *In re King*, 76 L.J., Ch. 44.

Correspondence.

Forms of Assent.

Sir,—Several points have occurred in my firm's office during the last couple of years relating to assents in favour of beneficiaries absolutely entitled under wills to freehold and leasehold property.

I will summarise these as briefly as I can :—

1. Freehold property with restrictive stipulations and long leasehold property became vested in a beneficiary absolutely. I was acting for the beneficiary and Messrs. X for the executors of the deceased. Messrs. X submitted form of assent No. 3 from Prideaux's "Precedents," 22nd ed., Vol. III, page 841. I claimed that as there had been statutory advertisements for creditors, there was no need to adopt this long form of assent, which involved its execution in duplicate and a covenant by the beneficiary. Messrs. X insisted on the ground that it is doubtful whether statutory notices extend to cover covenants or liabilities under long leases. My own view was exactly the contrary, but for the sake of harmony I gave way. The point arises as to whether the form in question can be insisted upon under the above circumstances.

2. I recently had a case where some farm and cottage property in the country which had been conveyed with the most meagre descriptions were separately specifically devised to a number of different beneficiaries. It was absolutely necessary to attach plans as otherwise conflict might have arisen between the various devisees. In that case, as all the residuary legatees were *sui juris*, it was arranged that the expense of the assents should come out of the residue. I notice, however, that there is a decision on s. 3, sub-ss. (1) and (2), of the Land Transfer Act, 1897, the general wording of which section is followed in the Administration of Estates Act, 1925, s. 36, to the effect that a devisee cannot require an assent to describe land devised in more precise terms than those contained in the will. See *In re Pix; Plomley* v. *Stileman* [1901] W.N. 165. I take it that the above decision would probably apply to cases under clause 36 of the Administration of Estates Act, and that if the devisee wants a more elaborate description than that given in the will he must pay for the preparation of the assent. In passing, why when the draftsman means "shall" does he persist in saying "may" ?

3. I have another case now before me in which a simple gift of a leasehold house is caught up by a marriage settlement. This will necessarily involve a somewhat more elaborate form of assent, and the question is whether the marriage settlement trustees must pay for this, and also for any work done by the solicitors for the executors under the will in perusing the marriage settlement and in corresponding with the solicitors for the trustees thereof.

I have purposely put these questions in the form of a letter as I think they are of general interest to the profession. In any case I should be indebted to you for your views, as indeed the profession at large is indebted to you for the vast amount of assistance given from week to week on these difficult points arising on the 1925 legislation.

London, E.C.3. E. S. W.
28th January.

[It is hoped that the points raised by our correspondent may be dealt with in "A Conveyancer's Diary."—Ed., *Sol. J.*]

Coincidence in Police Evidence.

Sir,—At the recent trial of Pinet at Aix-en-Provence for the murder of Miss Branson, a police witness was asked by the judge whether he had not made false statements to the accused man with the view of entrapping him into a confession ; and whether he had not even made false statements to a third party with that object. The witness (M. Guibbal, head of the Marseilles Flying Squad) urged in defence that he did this

in the interests of society—"that sort of quizzing has to be done by the police the world over."

It induces mixed reflections that this "quizzing" was indubitably resorted to by a police inspector at the trial of an indictment for murder before Chief Justice Bovill and a jury at the Central Criminal Court, Annual Register, 1871, "Remarkable Trials," p. 233 ; *R.* v. *Pook*.

In his summing-up, Lord Chief Justice Bovill observed that in his opinion the police had also gone much beyond their duty in not only questioning the prisoner, but in making false statements to him (that the deceased had said the accused gave her a locket which a third party admitted having given to her). The learned Lord Chief Justice added that "this [making false statements to the prisoner] had clearly been done" by a police inspector called Mulvaney.

It is to be hoped that the parallel cannot be carried further, because, in the *Eltham Murder Case* ("Tyler's Medical Jurisprudence," Vol. I, p. 552), Lord Chief Justice Bovill also censured the police for negligence in not collecting the evidence.

It may have some distant bearing on the result of the trial at Aix-en-Provence that by French criminal law suicide is not a crime (la loi n'a point incriminé le suicide ; Stephen's Hist. Cr. Law, Vol. 3, p. 105).

N. W. Sibley, B.A., LL.M.,
(Joint Author Criminal Evidence Act, 1898).

Liverpool,
23rd January.

The Law of Domicil.

Sir,—Referring to your notes on current topics in your issue of 14th December, 1929, on the subject of the judgment in *Re Ross: Ross* v. *Waterfield* (*Times*, 15th November, 1929), and to the judgment in *Re Annesley: Davidson* v. *Annesley* [1926] which was cited with approval by Luxmoore, J., you will recollect that, applying the same criterion in these two decisions, namely that the "law of domicil" means the whole law of the country of domicil, including the rules of private international law administered by its tribunals, the effect of these decisions was that in the first-named case it was held that the succession to movable property of an English subject domiciled in Italy is governed by English territorial law, and in the second-named case that the succession to the movable property of an English subject domiciled in France is governed by French territorial law on the grounds that the Italian courts would not accept the *renvoi* whereas the French courts would.

You will also recollect that after the judgment in the *Annesley Case* we expressed doubt as to whether, in accordance with the present trend of French jurisprudence, the French courts would, in fact, accept the *renvoi* which, on the evidence before him, Russell, J., found as a fact that they would.

It may, therefore, be of some interest to quote the following extract from a judgment rendered on 26th March, 1929, by the Court of Appeal of Douai, which is extracted from last month's journal "Du Droit International."

This judgment was rendered in connexion with a petition for divorce, but in so far as it refers to the doctrine of the *renvoi* it is, of course, equally applicable to the question of succession, and it is worthy of note that the rejection of the *renvoi* is approved by the commentator in the following words :—

"The Judgment rejects the *renvoi* and indicates correctly that in every country the system of conflict of laws is of an imperative nature and a matter of public order."

The extract from the judgment reads as follows :—

"Whereas, further, if one must consider it as certain that in accordance with private international law the English legislature (Courts) has renounced its prerogatives with regard to its nationals domiciled in France, such disposition is in conflict with the principle likewise of private international law which flows from Article (3) of the Civil Code and, in accordance with which the rights of foreigners in France are fixed by their national law ;

"That one can solve this conflict by applying the Rule taken from Article (3) of the Civil Code which, being a rule of private international law, constitutes an Act of sovereignty of a purely territorial character, which cannot be affected by a foreign legislature ;

"That one cannot accept the *renvoi* to French law when the legislature (French) has not admitted it ;

"That, consequently, in the case in question, it is necessary to apply English law . . ."

From the practical point of view we are consequently faced with the following difficulty, namely, that, whereas the English courts have found as a fact that the French courts will accept the *renvoi* to and administer French territorial law in respect of English subjects domiciled in this country, the tendency of French jurisprudence as exemplified by the judgment herein referred to, is to reject the *renvoi* and to administer English territorial law.

Barclay, Baerlein & Mordan.

37, Rue des Mathurins,
Paris.
22nd January.

Reviews.

The Shareholders', Directors' and Voluntary Liquidators' Legal Companion. Sir Francis Beaufort Palmer, Bencher of the Inner Temple. Thirty-third edition by Alfred F. Topham, K.C., Bencher of Lincoln's Inn, and A. M. R. Topham, B.A. 1930. Crown 8vo. pp. viii and 304. London : Stevens & Sons, Ltd. 4s. net.

That this is the thirty-third edition of this work is not surprising, as it contains a mass of information at a very modest price. As its name implies, it is intended for laymen rather than for the legal profession, but, as a summary of the provisions of the new Act for general matters, it will, no doubt, be read by lawyers.

While the work of bringing this new edition up to date has, in the main, been well done, attention must be drawn to some inaccuracies and omissions. Thus, in more than one place (e.g., pp. 75 and 266) reference is made to meetings for confirming special resolutions, now, of course, no longer required. On p. 92 the statement is made that a notice need not state that a resolution will be proposed as an "extraordinary resolution"—a statement clearly at variance with the wording of s. 117, quoted two pages earlier, and with the decision in *MacConnell* v. *Prill & Co.*, 67 Sol. J. 566.

The possibility of articles requiring a director to disclose his interest in contracts is referred to on p. 68, but no mention is made of the requirements of s. 94 of the new Act. A separate section of the book is devoted to the duties of voluntary liquidators, but the reader is handicapped and liable to be misled by the absence of a clear distinction between the procedure in a creditors' and that in a members' winding up, the statements being often applicable to only one of these methods, although nothing is said to this effect.

No doubt these defects are the result of the haste in which the new edition was prepared, and will be remedied in future editions.

The Auctioneers' Press Guide, 1930 (including List of Bill-posters). Sixth Edition. 5 Clement's Inn, W.C. 2s. each, post free.

This publication has been improved and enlarged, and will be found of the greatest value to the auctioneer, estate agent or builder, anxious to dispose of properties by means of the advertisement columns of the general, technical or trade newspapers. It contains particulars of the cost of inserting property advertisements, days of publication, latest time for copy, etc., in over 1,000 newspapers published in Great Britain.

The Bloody Assizes. Edited by J. G. Muddiman, M.A., Edinburgh and London. William Hodge & Company. 10s. 6d.

Mr. Muddiman has done his best for Jeffreys, but we still cannot love him. It is all to the good that the old notion of the bloodthirsty and incompetent bully should be dissipated, but though Jeffreys was in most ways no worse than others of his time, his greater capacity made him a greater power for evil, and whenever justice conflicted with other motives, justice was apt to suffer.

He used the engine of the law cruelly even where he did not operate it beyond the compass of legality, and had no bowels of compassion. His master was an unpleasant and shortsighted tyrant, respectable only by a certain diligence in affairs and earnestness in religion. He could have done much less harm had he not been served by more capable men.

Jeffreys had the hatred of generations and largely earned it. He will, in spite of truer history, loom as a figure of evil till his age is forgotten.

Mr. Muddiman's scholarship is beyond cavil, but he seems to develop overmuch enthusiasm for an unsympathetic figure.

Books Received.

The Yearly County Court Practice, 1930. By the late G. Pitt Lewis, K.C., and Sir Arnold White. 1930 Edition by Edgar Dale and J. Alun Pugh, Barristers-at-Law. The Sections comprising Time and Practice Tables, Costs and Fees, by Adam Partington, Solicitor, Group Registrar of Ilford, etc., County Courts. Vol. I. Demy 8vo. pp. ccxxxviii and (with Index) 1759. Vol. II: Enactments conferring Special Jurisdiction upon the County Courts. pp. xvi and (with Index) 896. London: Butterworth & Co., Publishers, Ltd. 40s. net.

The Law of Banker and Customer. James Walter Smith, B.A. (Oxon), LL.D. (London), Barrister-at-Law. Twenty-sixth Thousand. Revised by R. Borregaard, M.A. (Oxon), Barrister-at-Law. 1930. Crown 8vo. pp. vi and (with Index) 197. London: Effingham Wilson. 6s. net.

The Divorce and Separation of Aliens in France. Lindell Theodore Bates, Doctor of Laws (Universities of Paris, Madrid, and New York), Barrister-at-Law. 1929. Medium 8vo. pp. (with Bibliography and Index) 334. New York: Columbia University Press. London: Humphrey Milford, Oxford University Press. 35s. net.

The Whole Duty of a Director. Rights, Powers, Duties, Liabilities, as set forth in the Companies Act, 1929, *and Legal Decisions.* Albert Crew, Barrister-at-Law. 1929. Second Edition. Foolscap 4to. pp. xviii and (with Index) 178. London: Gee & Co. (Publishers) Ltd. 7s. 6d. net.

The Companies Act, 1929, *as affecting Accounts.* Russell Kettle, F.C.A. A Paper read before the Bristol Society of Chartered Accountants and the Nottingham Society of Chartered Accountants. 27 pp. London: Gee & Co. (Publishers) Ltd. 1s. net.

Sweet & Maxwell's Law Finder. A Guide to the Contents of Current Law Books. Demy 8vo. pp. 72. Stiff boards. London: Sweet & Maxwell, Ltd. 1s. net.

How to Appeal against your Rates. Vol. I (without the Metropolis), with Appendices of Forms and Notices required to be Served. A. Stanley Eamer, F.S.I., Chartered Surveyor (Rating Surveyor to the Metropolitan Borough of Lambeth). 1930. Crown 8vo. pp. ix and (with Index) 179. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Workmen's Compensation and Insurance Reports. 1929. Part 3 (completing the volume for 1929). London: Sweet and Maxwell, Ltd. Edinburgh: W. Green & Son, Ltd. Annual subscription, £2, post free.

Notes of Cases.

High Court—Chancery Division.

In re **Mills: Mills** *v.* **Laurance.**

Eve, J. 20th December, 1929.

Power—Release—Testamentary Power of Appointment—Trust for Donee in Default of Appointment—Power coupled with Duty—Invalidity of Release.

This originating summons raised the question whether the plaintiff could effectively release a power of appointment, and alternatively whether he could exercise it in his own favour. By his will dated 24th May, 1922, the testator appointed the plaintiff and the defendant Laurance to be executors and trustees and directed his trustees to accumulate the annual income of his residuary trust fund at compound interest for a period of twenty-one years, and to hold the fund for the benefit of any one or more of the children and remoter issue of the testator's father who, in the opinion of the plaintiff, should evidence a desire to maintain the family fortune by replacing the enormous sums of which it had been despoiled by death duties and other taxation, as the plaintiff should by deed revocable or irrevocable appoint, and in default and subject to any such appointment in trust for the plaintiff absolutely. The plaintiff was himself an object of the power, but he was not to appoint to himself any greater interest than a life interest.

Eve, J., in a reserved judgment, said the question raised by the summons was whether the power of appointment was a power coupled with a duty. If so, the plaintiff could not release it, and in his opinion the power in the present case was so coupled. The intention of the testator was clear. The income was to be accumulated and the plaintiff was to select from the class an individual who in his judgment had evidenced an ability and desire to maintain the family fortune. The plaintiff could not divest himself of the power nor do anything which would preclude him from exercising it. This conclusion was supported by (*inter alia*) *Saul* v. *Pattinson*, 55 L.J. Ch. 831. The questions asked by the summons must therefore be answered in the negative.

Counsel: *Bennett*, K.C., and *Cleveland-Stevens*; *H. F. F. Greenland*; *Gavin Simonds*, K.C., and *Guest Mathews*.

Solicitors: *Murray, Hutchins & Co.*; *Bircham & Co.*

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Pastre *v.* **Pastre.** Hill, J. 19th December, 1929.

Divorce—Decree of Judicial Separation in favour of Wife—Order for Permanent Alimony—French Domicil—Subsequent Dissolution of Marriage in France on Application of Husband—Application to discharge Alimony—Currency of Order—Discharge.

On this summons adjourned into court a former respondent husband applied for the discharge of an order for permanent alimony made against him upon a decree of judicial separation pronounced in March, 1909. In May, 1926, the respondent obtained dissolution of the marriage by process in the French courts, which, it was submitted, put an end to his obligation to pay alimony.

Hill, J., in a considered judgment, said that if the husband's domicil was in France the decree of dissolution was by a court of competent jurisdiction, and must be recognised as having effectively dissolved the marriage. The husband's domicil of origin was French, and he had sworn that he had never acquired any other domicil. There was no affidavit by the wife, but in her petition for judicial separation, filed in 1909, she alleged that the husband was domiciled in France. There was no ground for finding that the husband had acquired any new domicil of choice. It appeared that the decree of

the French court had been made on a ground which would not be a good one in this country—namely the existence for three years of a decree of judicial separation. But it was the decree of a court of competent jurisdiction in a proceeding in which the wife was an active party (she had appealed unsuccessfully to the *Cour de Cassation*). It followed that the parties were no longer husband and wife. The decree of judicial separation was based on the continuance of the marriage relation. The order for alimony was consequential on the decree, and was expressed to be until further order, and until then it was effective. He (his lordship) was now asked to make a further order, namely, to discharge the direction for payment in the future. In his opinion he had no alternative but to do so. The whole basis of an order for permanent alimony was gone. Reference had been made to the unreported case of *Weiss* v. *Weiss* in 1908 (in which Lord Gorrell had discharged an order for permanent alimony on the husband's agreeing to pay the wife £1 per week), but there the respondent's undertaking to pay that sum must have been a voluntary undertaking. There was no power to impose terms. In *Bragg* v. *Bragg*, [1925] P. 20, it had been held that a maintenance order went on running after a divorce. But that was a case under the Summary Jurisdiction Acts, which gave peculiar powers to magistrates, and was not of assistance in the present case. The order for alimony would therefore be discharged.

Counsel for the former wife asked for leave to appeal, which was granted on terms.

COUNSEL: *Cotes-Preedy*, K.C., and *Barnard*, for the former respondent husband; *Hodson* for the former wife petitioner.

SOLICITORS: *de la Chapelle & Co; Hills, Arnold & Bender.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Le Mesurier (otherwise Gordon) *v.* Le Mesurier.

Lord Merrivale, P. 17th January.

NULLITY—INDIAN DIVORCE—MARRIAGE OF PARTIES WITHIN SIX MONTHS OF FINAL DECREE—CUSTODY—INDIAN DIVORCE ACT, 1869, No. 4, s. 57.

In this undefended petition for nullity on the ground of invalidity of the marriage ceremony between the parties, counsel for the woman petitioner made a special application for an order for the custody of the child of the union, a daughter, aged seven years.

Counsel submitted that an order should be made giving not only the care and control of the child to the petitioner, but an order for full custody which would enable her to assert all the rights and remedies contained in s. 193 of the Judicature Act, 1925. Counsel referred to the wording of the section and also to *Jackson (otherwise Macfarlane)* v. *Jackson* [1908] P. 308, in which an order for custody had been made upon a decree of nullity on the ground of insanity, although the matter had not been argued. The facts appear sufficiently from the judgment.

Lord MERRIVALE, P., in the course of his judgment, said that the present parties, being aware that it was not possible legally to marry in India until after six months from the date of the Lahore divorce decree, went through a form of marriage at Colombo in the genuine belief that the Indian law on that point did not apply to Ceylon, and they could be legally married there. On the respondent's retirement from the Indian Army, in which he had held a commission, the parties came to England, where they lived for some time until circumstances arose which resulted in the petitioner contemplating divorce proceedings. Then it became apparent that the ceremony at Colombo was ineffective because the petitioner's previous marriage had not then been effectually dissolved so as to allow of remarriage at that date. With regard to the petitioner's prayer for the custody of the child, the fact that there had been a form of marriage and the child had been born after that ceremony differentiated the case from the decisions under the Legitimacy Declaration Act. He did not doubt that, under the provisions of the Judicature (Consolidation) Act, 1925, the petitioner was entitled to an order for custody, with all its consequences. There would therefore be a decree *nisi* of nullity, with costs against the respondent, and an order that the petitioner should have the custody of the child.

COUNSEL: *Clifford Mortimer* and *William Latey* for the petitioner.

SOLICITORS: *S. F. Miller & Miller.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Chancery of Lancashire.

In re Tomkinson, M'Crea and Bell *v.* The Attorney-General of the Duchy of Lancaster.

Vice-Chancellor Courthope Wilson, K.C. 16th December, 1929.

GIFT TO CHARITIES OR RELIGIOUS BODIES—GOOD CHARITABLE GIFT.

This was an application by the surviving trustees of the testatrix, Emma Tomkinson, by way of originating petition for obtaining the declaration of the court as to whether a gift of the residuary estate was void or whether it was a valid charitable bequest. By her will the trustees were directed to "distribute the residue of the said moneys to such charities or to such religious bodies and in such amounts as they in their discretion shall think fit."

The VICE-CHANCELLOR, in the course of his judgment, said that he did not think that the testatrix meant to say "to such charities or to such religious objects as are not charitable." He thought that he must read the clause as meaning "to such charities or such religious bodies as are charitable." Having regard thereto, he was of opinion that the gift was a good one, and there would be accordingly a declaration to that effect, and he directed that a scheme should be settled.

COUNSEL: *Bertram B. Benas; The Attorney-General of the Duchy of Lancaster* (Sir Herbert Cunliffe, K.C.), and *E. Ackroyd; H. M'Master.*

SOLICITORS: *H. H. Bell; Garnett, Tarbet & Co.* (Agents for the *Duchy Solicitor*).

[Reported by WILLIAM GEDDES, Esq., Barrister-at-Law.]

In Parliament.

Progress of Bills.

House of Lords.

Unemployment Insurance (No. 2) Bill. Read the Third Time. 24th January.

Road Traffic Bill. Report. Third Day. 26th January.

House of Commons.

Arbitration (Foreign Awards) Bill [Lords]. Read the First Time, and passed. 20th January.

Land Drainage (Scotland) Bill. Read a Second Time. 22nd January.

Blasphemy Laws (Amendment) Bill. Read a Second Time. 23rd January.

Poor Law Bill [Lords]. Read the First Time. 26th January.

Collecting Charities (Regulation) Bill. Read a Second Time. 27th January.

Land Drainage Scotland (Money) Resolution. Reported and agreed to. 27th January.

Children (Employment Abroad) Bill [Lords]. Read a Second Time. 27th January.

House of Commons.

Questions to Ministers.

COMPANY BANKRUPTCIES AND LIQUIDATIONS.

Mr. DAY asked the President of the Board of Trade the number of bankruptcies and the number of limited companies

that have gone into liquidation during the previous twelve months, and the amount of capital involved in the latter case?

Mr. W. GRAHAM: The number of receiving orders and administration orders in bankruptcy made during 1929 was 3,972. The number of company liquidations was 3,086, of which 2,835 were voluntary. Statistics as to the capital of these companies, whether nominal, issued, or paid up, are not available in a collected form; and, bearing in mind that the figures include voluntary as well as compulsory liquidations, that a company in liquidation is not necessarily insolvent, and that a company may be wound up for purposes of re construction or amalgamation, I doubt whether any useful purpose would be served by having them prepared.

20th January.

JUVENILE OFFENDERS (PROBATION BILL).

Major COLVILLE asked the Secretary of State for Scotland when the Government propose to introduce a Probation Act for Scotland to further the probationary method of dealing with juvenile delinquents?

Mr. W. ADAMSON: A Probation Bill for Scotland has been prepared. The date of its introduction must, however, depend upon the exigencies of Parliamentary business.

20th January.

INSURANCE FOR FISHERMEN.

Major WOOD asked the Secretary of State for Scotland whether he has completed his investigations into the question of a comprehensive scheme of insurance for fishermen; and whether he is now in a position to announce the Government's proposals in the matter?

The UNDER-SECRETARY OF STATE FOR SCOTLAND (Mr. T. Johnston): Inquiries into this question are still proceeding. The question, as the hon. Member is aware, is necessarily a complicated and difficult one, but there will be no avoidable delay. I am not at the moment in a position to make any further statement on the subject. 21st January.

SMALL-POX.

Mr. DAY asked the Minister of Health the number of cases of small-pox that have been notified since 1st January, 1929, in England and Wales, giving separate figures for London and the number of fatal results?

Mr. GREENWOOD: During the fifty-two weeks ended 28th December, 1929, 9,066 cases of small-pox were notified in England and Wales (excluding London), and 1,903 cases in London. Among these cases, thirty-nine deaths occurred which were classified to small-pox. These figures are at present provisional. 22nd January

Societies.

Gray's Inn.

Friday, the 24th ult., being the Grand Day of Hilary Term at Gray's Inn, the Treasurer (Master The Right Hon. Lord Greenwood, K.C.) and the Masters of the Bench entertained at dinner the following guests: His Excellency the German Ambassador, The Right Hon. the Lord High Chancellor (Lord Sankey, G.B.E.), His Grace the Duke of Atholl, K.T., G.C.V.O., C.B., D.S.O., The Right Hon. Lord Rochdale, The Right Hon. Lord Riddell, The Right Hon. Sir Tudor Walters, M.P., The Right Hon. Montagu Norman, D.S.O., The Hon. Mr. Justice Farwell, The Hon. Mr. Justice Bennett, Sir Harry McGowan, K.B.E., Sir Anthony Hope Hawkins, The Attorney-General (Sir William Jowitt, K.C., M.P.), Colonel The Hon. James L. Ralston, K.C., C.M.G., D.S.O., Lieut.-Col. G. P. Vanier, D.S.O.

The Benchers present in addition to the Treasurer were: Sir Lewis Coward, K.C., The Right Hon. Sir Dunbar Plunket Barton, Bart., K.C., Mr. Edward Clayton, K.C., Mr. Arthur Gill, The Right Hon. Lord Atkin, Sir Montagu Sharpe, K.C., The Right Hon. Lord Justice Greer, Mr. Timothy Healy, K.C., Mr. W. Clarke Hall, Sir Cecil Walsh, K.C., Mr. R. E. Dummett, The Hon. Vice-Chancellor, Sir Courthope Wilson, K.C., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, Mr. Malcolm Hilbery, K.C., with the Preacher (The Rev. W. R. Matthews, D.D.) and the Under-Treasurer (Mr. D. W. Douthwaite).

MOOT—LIBEL ON A BARRISTER.

A moot was held in Gray's Inn Hall on Monday, 27th ult. Mr. Edward W. Cave, K.C., presided. The following Masters of the Bench were present: Masters Lord Justice Greer (Master of the Moots), Malcolm Hilbery, K.C., and F. Hinde.

The following appeal was argued:—

YZ is an eminent barrister. He is retained to defend a well-known society lady on a charge of stealing a pair of canaries. AB, the editor of a daily newspaper, publishes in his paper an article containing the following words:— "... The lady will be defended by Mr. YZ, who is, as our readers know, one of the film stars of the Bar and a well-known bohemian. We are informed by him that the case will last several days."

YZ sues AB for damages for libel, the innuendo being that AB meant and was understood to mean by the said words that he, YZ, was "a person of low character and morals, was given to advertising in defiance of the etiquette of the Bar, was extortionate in regard to his fees, was prolix, unnecessary and incompetent, and ought to be disbarred."

It was admitted at the trial that YZ had told AB in private conversation at their club (which would be accurately described as a "Bohemian" Club) that he had been retained, and that the case would last several days.

The defendant pleaded that the words were not capable of a defamatory meaning, and alternatively were fair comment on a matter of public interest, and were true in substance and in fact.

The judge ruled that the words were capable of a defamatory meaning and were used with regard to a matter of public interest, and the jury returned a verdict for the plaintiff with damages £20,000.

The defendant appeals.

Mr. F. Bower Alcock argued on behalf of the appellant; Mr. R. N. Kirby and Mr. F. J. Parker on behalf of the respondent.

The President, in giving judgment, said that the law of libel was in a state of continuing growth. The law of libel in the last fifty years had undergone this important change. It was now no longer necessary, as it was in the old form of declaration, to use the words "meaning the plaintiff," or the words "the defendant meant or was understood to mean." It was sufficient now if evidence were given that other people, not necessarily the plaintiff, understood the words in a defamatory sense. He (the President) thought that the words here were capable of a defamatory meaning. A barrister could not be a member of the Bar and at the same be a film star. The learned judge was right in allowing the case to go to the jury. The only question for the court was as to the quantum of damages. The sum awarded was excessive and unreasonable in view of the nature of the words used. The appeal would be allowed on that ground, and the case must go back to the jury for them to assess the amount of damages.

Bar Council Election.

The following is a list of the candidates (thirty-one) nominated to fill the twenty-four vacancies upon the Bar Council:—

Mr. G. Thorn Drury, K.C., Mr. R. E. L. Vaughan Williams, K.C., Mr. J. M. Gover, K.C., Mr. J. F. W. Galbraith, K.C., M.P., Sir Walter Greaves Lord, K.C., M.P., Mr. F. K. Archer, K.C., Mr. S. R. C. Bosanquet, K.C., Mr. H. H. Joy, O.B.E., K.C., Mr. Charles Doughty, K.C., Mr. W. P. Spens, K.C., Mr. C. F. Llowenthal, K.C., Mr. Noel B. Goldie, K.C., Mr. E. Percival Clarke, Mr. Frederick Hinde, Mr. C. Stafford Crossman, Mr. J. H. Stamp, Mr. W. D. Mathias, Mr. W. C. Cleveland-Stevens, Mr. George F. Kingham, Mr. Albert Crew, Mr. J. H. Thorpe, O.B.E., Mr. A. W. Cockburn, Mr. Arthur Morley, O.B.E., Mr. F. J. Tucker, Mr. R. F. Burnand, O.B.E., Mr. Geoffrey Hutchinson, Mr. T. M. O'Callaghan, Mr. T. R. Fitzwalter Butler, Mr. C. R. R. Romer, Mr. H. H. Maddocks, Mr. Gerald A. Thesiger.

The election will take place in the week ending 15th of February.

Middle Temple.

GRAND DAY.

Tuesday, the 28th ult., being Grand Day of Hilary Term at the Middle Temple, the Treasurer, The Hon. Mr. Justice Horridge, and Masters of the Bench entertained at dinner the following guests:—

Viscount Hampden, K.C.B., Viscount Sumner (Treasurer of the Inner Temple), The Lord Bishop of Worcester, Lord Southborough, G.C.B., Lord Forres, Lord Hanworth, K.B.E. (Master of the Rolls), The Hon. Mr. Justice Farwell,

The Hon. Mr. Justice Bennett, Field-Marshal Sir Claude Jacob, Sir John Thomson-Walker, F.R.C.S., Sir Bernard Partridge, Brigadier-General K. J. Kincaid-Smith, C.B., C.M.G., D.S.O., Mr. P. A. László de Lombos, M.V.O., The Very Rev. H. J. White, D.D. (Dean of Christ Church, Oxford), Captain Oswald Birley, M.C., Mr. Stanley Christopherson and The Reader.

The Benchers present, in addition to the Treasurer, were :—

Mr. W. English Harrison, K.C., Sir R. A. McCall, K.C., Mr. A. Macmorran, K.C., Sir Ellis Hume-Williams, Bart., K.C., His Honour Judge Sir Alfred Tobin, K.C., Mr. E. A. Mitchell-Innes, K.C., Mr. C. F. Lowenthal, K.C., His Honour Judge Holman Gregory, K.C., Mr. St. J. G. Micklethwait, K.C., Sir Lynden L. Macassey, K.C., Sir Cecil J. B. Hurst, K.C., Mr. Heber L. Hart, K.C., Mr. A. M. Dunne, K.C., Sir H. S. Cautley, Bart., K.C., M.P., Mr. J. Bruce Williamson, Mr. A. M. Sullivan, K.C., His Honour Judge Artemus Jones, K.C., Mr. W. T. Lawrance, K.C., Mr. Cecil Whiteley, K.C., Mr. J. Scholefield, K.C., Mr. E. H. Tindal Atkinson, C.B.E., Sir J. B. Melville, K.C., M.P. (Solicitor-General).

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on Monday, the 27th ult., when Mr. E. H. Pearce occupied the chair. Lord Riddell delivered an interesting address on medico-legal problems entitled "Moses, 1930," which was followed by a discussion. A vote of thanks to Lord Riddell was moved by Sir Albion Richardson, seconded by Mr. J. R. Yates and was carried with acclamation.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 28th ult. (Chairman, Mr. C. F. S. Spurrell) the subject for debate was as follows :—

Moot.—A, who had been addressing a political meeting, had reason to fear that he would be assaulted by some roughs on leaving the building. To minimise the risk, instead of wearing his own hat and overcoat, he deliberately took from the cloakroom (without B's permission) the hat and overcoat of B (a member of the audience), and with their help got away unscathed. B, not being able to find another hat and overcoat, assumed those abandoned by A, and in consequence was mistaken for A and seriously assaulted and sustained severe personal injuries, and has endured much pain and been put to expense for medical attention. The hats and coats have since been returned to their true owners.

Motion.—That in the above circumstances B has an action against A for (*a*) substantial and (*b*) nominal damages.

Mr. Kirk Glazebrook opened in the affirmative and Mr. V. Foden-Pattinson seconded. Mr. L. F. Tucker opened in the negative and was followed by Mr. Robert Ives, who seconded.

The following members having spoken, viz., Messrs. C. B. V. Head, G. Roberts, C. C. Ross, M. M. Trackman, M. Slowe, C. N. Bushell, M. C. Batten, J. F. Ginnett, J. C. Christian-Edwards, and P. H. North-Lewis, the opener replied, and the Chairman having summed up, motion (*a*) was lost by three votes, whilst motion (*b*) was carried by sixteen votes.

There were twenty-three members and one visitor present.

Legal Notes and News.

Honours and Appointments.

Mr. W. J. Gleeson, K.C., has been sworn in as an additional Circuit Court Judge of the Irish Free State for a period of twelve months.

Miss Aileen Paterson, Solicitor, Maybole, Ayrshire, has been appointed interim Burgh Procurator-Fiscal by the Maybole Town Council in succession to her father, the late Mr. Peter Paterson.

Mr. Geoffrey L. Peace, Solicitor, has been appointed Clerk to the Wellington (Salop) Urban District Council in succession to Mr. John W. Littlewood, who has resigned after thirty-five years' service. Mr. Peace—who was admitted in 1919—has occupied the office of Deputy Clerk for some time.

Mr. William Butler Lloyd, Barrister-at-Law (Circuit Judge, Sierra Leone), has been appointed a Puisne Judge of the Supreme Court of Nigeria.

Mr. J. J. Oliver, Solicitor, of the firm of Messrs. George and James Oliver, Hawick, has been appointed an Honorary Sheriff Substitute of Roxburghshire.

Mr. William Taylor, Solicitor, Clerk to the Guardians of the Kingston Union and Clerk to the North-Eastern Area of Surrey Assessment Committee, has been appointed Chief Public Assistance Officer for the County of Surrey, as from the 1st April, 1930. Mr. Taylor was admitted in 1917.

Dr. Leonard Henry West, O.B.E., LL.D., J.P., Chairman of the Buckinghamshire County Council, has been appointed a Deputy-Lieutenant for the County of Bucks. Dr. West was formerly one of The Law Society's tutors.

Alderman Hubert F. Homan, Rochester, has been elected President of the Incorporated Society of Auctioneers and Landed Property Agents for the ensuing year.

Mr. William Woodward, Solicitor, Deputy Town Clerk of Dudley, has been appointed Town Clerk of Hartlepool in succession to Mr. J. W. Porter, recently appointed Town Clerk of Gateshead.

Mr. A. G. Flintoff, Solicitor, has been appointed Assistant Solicitor in the office of Mr. J. Moore Hayton, B.A., Town Clerk of South Shields. Mr. Flintoff was admitted in 1929 (June).

The Minister for Justice of the Irish Free State has appointed Mr. John G. Alexander, Barrister-at-Law, to be an Examiner of Titles in the Central Office of the Land Registry, under the Local Registration of Title (Ireland) Act, 1891. Mr. Alexander was called to the Bar in 1924, and was awarded the Society's Prize, value £21, at the Final Examination in October, 1923.

Mr. William Corrigan, Solicitor, Dublin, has been appointed Solicitor to the Attorney-General of the Irish Free State. Mr. Corrigan was admitted in 1912.

Mr. H. F. Payne, Assistant Clerk to the Leicester Justices, has been appointed Clerk to the Justices in succession to Mr. W. J. Day, who has resigned.

Mr. Herbert Campbell Scott, Solicitor, Larne, has been appointed Town Clerk and Town Solicitor for Ballyclare.

Mr. A. C. G. Charlton, Assistant Clerk to the Staines Rural District Council, has now been appointed Clerk to the Council on the resignation of Mr. R. A. Hogarth, who will take up the duties of Public Assistance Officer to the Buckinghamshire County Council.

Mr. Philip Parker, Solicitor, Clerk to the Knighton Board of Guardians, has been appointed Public Assistance Officer to the Radnorshire County Council.

Mr. John Murray, B.Sc., Solicitor, Bishop Auckland, has accepted an engagement as representative of a firm of English solicitors in Paris. Mr. Murray was admitted in 1923.

Mr. R. H. Carson, Crown Solicitor for Tyrone, has been appointed Chief Crown Solicitor for Northern Ireland.

RECORDER AND SOVIET GOVERNMENT.

Sentence of fifteen months' imprisonment with hard labour was passed by the Recorder (Sir Ernest Wild, K.C.) at the Central Criminal Court on the 20th ult., on Abraham Leveson, forty-nine, traveller, a Russian, who was found guilty of receiving a bale of cloth the property of the London, Midland and Scottish Railway. Mr. J. C. Maude prosecuted ; Mr. Marston Garsia appeared for the defence. The Recorder intimated that he would recommend that the prisoner should be deported. He hoped that now friendly relations were being established between His Majesty's Government and the Russian Soviet Government the Russians would have some sense of their international obligations.

REDUCTION OF LEGAL CHARGES.

Proposed Panel of Barristers and Solicitors.

The attention of the Bar Council and The Law Society has been called to a notice in the press of the formation of a society which proposes to form a panel of barristers and solicitors who are put forward as willing to do a certain class of legal business at less than the usual remuneration.

The Bar Council and The Law Society having jointly considered the matter, are of opinion that the formation of such a panel is contrary to the practice of the profession as indirectly offending the rules against advertising.

COMMON SENSE AND DIVORCE.

"I have always tried to take a common-sense view of the law of divorce," said Mr. Justice Hill, in the Divorce Court on Wednesday, "but I always find myself up against a brick wall. That may be due to my want of common sense or my misapprehension of what you may call the dictates of common sense."

TEMPERANCE PERMANENT BUILDING SOCIETY.

The Directors announce that the accounts for the past twelve months show increases in all departments.

The share and deposit capital has increased by £204,153, the total now standing to the credit of shareholders and depositors being £3,497,837.

The sum of £906,793 has been advanced during the year on the security of house and shop property mostly purchased for personal occupation. The total amount secured on mortgage at the end of the year was £3,803,369, being an increase of £337,643.

The trustee securities held by the Society have been written down to the prices obtaining on 31st December, 1929, and it is proposed to place £39,500 to reserve, which is now £443,000. The total assets of the Society now exceed £4,000,000, which appears to be in a thoroughly sound position.

THE ROYAL EXCHANGE ASSURANCE AND THE HATRY FUND.

The special Stock Exchange committee appointed to devise a scheme for the solution of the Hatry complexity have arranged that The Royal Exchange Assurance shall take over the duties of trustees. As trustees they will give effect to the recommendations of this committee and administer the £1,000,000 fund raised by the Stock Exchange, and it is hoped that the scheme evolved will enable them to effect a fair distribution of the burden, and to re-imburse equitably those members of the genuine investing public who hold shares n any of the Hatry group of companies.

CHIEF TAXING MASTER RETIRES.

Mr. T. S. Dury, who has been succeeded by Master Hughes-Onslow as Chief Taxing Master, was admitted a Solicitor in 1880. He had been a Taxing Master since 1907, an Assistant Registrar at the Land Registry for eight years from 1898, and for eight years previously Assistant Secretary and Assistant to the Solicitor of the Duchy of Cornwall. Mr. Dury was in the Harrow XI in 1870, the Oxford XI in 1876 and the Yorkshire XI 1876–80. He played racquets for Oxford in 1875–6.

THE SOLICITORS ACTS, 1888 & 1919.

The following Solicitors have been struck off the rolls:—Arthur Francis Heane, formerly of Nottingham, and Charles Vincent Whitegreave, formerly of 25, Craven-street, Strand, W.C.2.

ABSURD APPLICATIONS.

In giving judgment for the defendant in an action last week, Mr. Justice Roche observed: "I understand that there were proceedings under Order XIV. How on earth people can bring themselves to swear falsely that there is no defence to an action—which means that there can be no argument on it—in a case of this sort I am at a loss to know, and I wish that the Masters would more frequently make a plaintiff making such absurd applications pay the costs of them."

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT NO. 1	MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
M'nd'y, Feb. 3	Mr. More	Mr. Jolly	Mr. Hicks Beach	Mr.*More
Tuesday .. 4	Ritchie	Hicks Beach	*Andrews	Hicks Beach
Wednesday. 5	Andrews	Blaker	*More	*Andrews
Thursday . 6	Jolly	More	*Hicks Beach	More
Friday 7	Hicks Beach	Ritchie	Andrews	*Hicks Beach
Saturday .. 8	Blaker	Andrews	More	Andrews

DATE.	MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
M'nd'y, Feb. 3	Mr. Andrews	Mr. Jolly	Mr. Blaker	Mr. Ritchie
Tuesday .. 4	More	*Ritchie	Jolly	*Blaker
Wednesday. 5	Hicks Beach	Blaker	Ritchie	*Jolly
Thursday . 6	Andrews	*Jolly	Blaker	*Ritchie
Friday 7	More	Ritchie	Jolly	*Balker
Saturday .. 8	Hicks Beach	Blaker	Ritchie	Jolly

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The EASTER VACATION will commence on Friday, the 18th day of April, 1930, and terminate on Tuesday, the 22nd day of April, 1930, inclusive.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phones: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (12th December, 1929) 5% Next London Stock Exchange Settlement Thursday, 6th February, 1930.

	MIDDLE PRICE 29th Jan.	INTEREST YIELD. £ s. d.	YIELD WITH REDEMPTION. £ s. d.
English Government Securities.			
Consols 4% 1957 or after	82⅞	4 16 8	—
Consols 2½%	54	4 12 7	—
War Loan 5% 1929-47	101¾	4 19 3	—
War Loan 4½% 1925-45	95	4 14 9	4 19 0
War Loan 4% (Tax free) 1929-42	101¼	3 19 0	3 17 6
Funding 4% Loan 1960-1990	86½	4 12 6	4 13 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93⅛	4 5 7	4 7 6
Conversion 4½% Loan 1940-44	95½	4 14 3	4 18 0
Conversion 3½% Loan 1961	75½	4 13 4	—
Local Loans 3% Stock 1912 or after	62	4 16 9	—
Bank Stock	249½	4 16 5	—
India 4½% 1950-55	81⅛	5 10 5	5 18 0
India 3½%	59⅛	5 17 8	—
India 3%	50⅛	5 18 10	—
Sudan 4½% 1939-73	92	4 17 10	4 19 0
Sudan 4% 1974	83	4 16 5	4 19 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years)	82½	3 12 9	4 3 3
Colonial Securities.			
Canada 3% 1938	86	3 9 9	5 1 0
Cape of Good Hope 4% 1916-36	94	4 5 1	5 0 0
Cape of Good Hope 3½% 1929-49	81	4 6 5	5 0 0
Commonwealth of Australia 5% 1945-75	85½	5 17 0	5 18 9
Gold Coast 4½% 1956	92	4 17 10	5 1 0
Jamaica 4½% 1941-71	92	4 17 10	4 19 0
Natal 4% 1937	93	4 6 0	5 4 0
New South Wales 4½% 1935-45	79½	5 13 2	6 12 6
New South Wales 5% 1945-65	84½	5 19 9	6 1 8
New Zealand 4½% 1945	94	4 15 9	5 1 6
New Zealand 5% 1946	100	5 0 0	5 0 0
Queensland 5% 1940-60	85½	5 17 0	6 0 9
South Africa 5% 1945-75	100	5 0 0	5 0 0
South Australia 5% 1945-75	85⅛	5 17 0	5 18 4
Tasmania 5% 1945-75	87½	5 14 3	5 15 3
Victoria 5% 1945-75	85⅛	5 17 0	5 18 4
West Australia 5% 1945-75	85½	5 17 0	5 18 4
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	61	4 18 4	—
Birmingham 5% 1946-56	101	4 19 0	4 18 6
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	70	4 5 9	4 18 9
Hull 3½% 1925-55	78	4 9 9	5 0 6
Liverpool 3½% Redeemable by agreement with holders or by purchase	71	4 18 7	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52	4 16 2	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62	4 16 9	—
Manchester 3% on or after 1941	61	4 18 4	—
Metropolitan Water Board 3% 'A' 1963-2003	62½	4 16 0	—
Metropolitan Water Board 3% 'B' 1934-2003	64	4 13 9	—
Middlesex C. C. 3½% 1927-47	82	4 5 4	5 1 0
Newcastle 3½% Irredeemable	70	5 0 0	—
Nottingham 3% Irredeemable	60	5 0 0	—
Stockton 5% 1946-66	99	5 1 0	5 1 6
Wolverhampton 5% 1946-56	100	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	79	5 1 3	—
Gt. Western Rly. 5% Rent Charge	96	5 4 2	—
Gt. Western Rly. 5% Preference	92	5 8 8	—
L. & N. E. Rly. 4% Debenture	76	5 5 3	—
L. & N. E. Rly. 4% 1st Guaranteed	74½	5 8 1	—
L. & N. E. Rly. 4% 1st Preference	67½	5 18 6	—
L. Mid. & Scot. Rly. 4% Debenture	77½	5 3 3	—
L. Mid. & Scot. Rly. 4% Guaranteed	76½	5 4 7	—
L. Mid. & Scot. Rly. 4% Preference	71½	5 11 11	—
Southern Railway 4% Debenture	77⅛	5 3 3	—
Southern Railway 5% Guaranteed	96½	5 3 8	—
Southern Railway 5% Preference	90	5 11 1	—

SOLICITOR, aged 27, admitted April, 1927, desires preliminary clerkship with a view to partnership or succession. Wide experience with first-class firms in conveyancing, common law and general work. Advocacy. —Box S. 50, Blackfords Advertisement Offices, Bristol.

SOLICITOR (over 20 years' practical experience) Conveyancing, Probate, Trust, &c., desires Managing Clerkship. Moderate Practice. View partnership or succession. Good references.—Box 239, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (35), Cambridge graduate, desires Managing Clerkship. Good general experience.—Apply "Alpha," Box 320, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, experienced in Conveyancing, is open to assist solicitors by post.—Box B. 331, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, 35, Public-school man, requires managing clerkship leading to partnership or succession; London excepted. Now and for the past six years managing clerk in large country practice. Considerable experience in conveyancing, probate, trust, and family work; also litigious matters, costs, etc. work without supervision, interview clients, take sole charge. Admitted 1921. Capital available.—Box 253, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, B.A., LL.B. (Camb.), available for locum work or to assist busy solicitor. South. Conveyancing, probate, trust, and general.—Box 95, Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor (23), November Final, desires post as Assistant Conveyancing and general practice. Trained in busy office.—Write Box 258, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR peruses Titles, draws Conveyances and other documents, looks up points, etc., etc., for busy solicitors by return of post.—Write Box 271, Solicitors' Journal, 29, Breams-buildings, E.C.4.

GENTLEMAN, accustomed to committee work and shorthand, with experience in reference work under the Rating and Valuation Act, will be free shortly; good worker; reasonable salary if some prospects.—Apply, in first instance, "R.," Box 55, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR'S Managing Clerk, unadmitted, wide experience litigation, conveyancing, common law; pleads fresh start any capacity, moderate salary; can furnish guarantee.—Lex, c/o W. W. Jemmett, F.I.S.A., Secretary, Central D.P.A. Society, Victory House, Leicester-square, W.C.2.

PRACTISING Solicitor would consider appoint- ment as assistant where proper facilities would be given for the conduct of his own practice on terms. Experience mostly conveyancing and High Court litigation, some advocacy. London only.—Write "M.," Box 353, Solicitors' Journal, 29, Breams-buildings, E.C.4.

ADMITTED Managing Clerk, general practice large city seven years, two years sole charge, desires engagement owing to amalgamation. Specialities: litigation, advocacy. Athletic, bachelor, and insatiable worker. —"M.P.," Box 459, c/o Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (37), now in practice on own account, small connection, desires managing clerkship in London, with liberty to practise. Salary by arrangement.—"J.," Box 448, Solicitors' Journal, 29, Breams-buildings E.C.4

YOUNG SOLICITOR desires Clerkship with a view to partnership. Experienced in litigation, workmen's compensation and company law; good advocate. Small capital at disposal. Excellent references, "C.," Box 558, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (33), Welsh speaking, now conducting own practice in small provincial town, would consider taking up a salaried appointment in a larger sphere, where a provincial experience of conveyancing and probate work would prove of utility; could arrange to be available at short notice.—Box 195, Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor undertakes drafting accounts, looking up points, etc., for busy solicitors in return for small charge.—"E.," Box 275, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (2nd Class Honours), with over 30 years' continuous experience in conveyancing, trust and probate work, willing to assist Solicitors by post.—"S." Box 312, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EX-OFFICERS AND OTHER RANKS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion and the name of this paper.

RETIRED Officer, R.A.F., desires employment Motor Car Salesman or other administrative and transport experience. Capable and energetic. Highest recommendations. 10903.

EX-OFFICER, 37, single, five years' experience in Solicitor's office, seeks appointment as Land Steward, Secretary or similar post. Excellent references. 11515.

CLERK of Works, wide experience of private Municipal and Government works. Thorough knowledge of all trades, quantities, prices and etc. Any part of the country. Excellent references. 11495.

EX-OFFICER, with family, desires position Planting, etc., British Dominions. Preferably British East Africa, or the Rhodesias. Had years of experience. Good health, trustworthy and competent. Responsibility and trust essential. 11505.

CAPTAIN (S.R.) Engineer, mechanical and marine, thorough technical training with teaching, organising, administrative and commercial experience; specialised in Boiler-house management, desires a post. Home or abroad. Good recommendations. 11018.

EX-OFFICER, held position as Private Secretary and Comptroller to a Peer; also a certificated Accountant with several years' experience, seeks responsible post; any capacity; excellent references. Dis. 232.

PRACTICES AND PARTNERSHIPS.

FOR DISPOSAL.—Well-established and lucrative Solicitor's general practice, in flourishing agricultural county town in West Wales.—Apply Box 299, Solicitors' Journal, 29, Breams-buildings, E.C.4.

PARTNERSHIP available in old-established Conveyancing Practice, small market town, South Coast. Scope for expansion by suitable vigorous man, public school, articled in provinces, fond of country pursuits; must be thoroughly experienced and capable of undertaking sole charge and advocacy, if necessary. Share producing upwards of £500 will be sold in first instance. —Write fully, Box 300, Solicitors' Journal, 29, Breams-buildings, E.C.4.

FOR SALE.—Young Solicitor required to take over small general practice in Kent. London 10 miles. Advocacy and private means essential. Easy terms for suitable man.—Box 294, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (35), M.A., Oxon, Commissioner for Oaths, desires partnership in old-established Conveyancing and General Country Practice; preferably in Chester or neighbouring counties. Wide experience in conveyancing, trust and family business and general practice. Able to introduce business; necessary capital available.—Box 246, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, practising own account, desires to purchase established progressive Conveyancing and General Practice producing average net profit £1,000 per annum in London.—Box 124, Solicitors' Journal, 29 Breams-buildings, E.C.4.

ENERGETIC solicitor, good advocate, requires sound litigious, conveyancing and general practice, in Kent.—Reply "B.," Box 525, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR desires to purchase old-established general and conveyancing practice in or near London showing substantial profits; or early succession.—Box 99, Solicitors' Journal, 29, Breams-buildings, E.C.4.

ARTICLED CLERKS, &c.

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SOLICITOR, with busy and growing general practice, has vacancy for Articled Clerk. Personal supervision. Premium required, part returned.—Apply. Box 146, Solicitors' Journal, 29 Breams-buildings, E.C.4,

SOLICITOR, general practice and clerk to local authority in growing South Coast town, has vacancy for articled clerk. Public school man preferred. Good prospects for suitable man used to country life.—Box No. 87, Solicitors' Journal, 29, Breams-bldgs., E.C.4.

INVESTIGATIONS.

ENQUIRIES and INVESTIGATIONS.—John Conquest, 36 Great James-street, Bedford-row, W.C.1 (Holborn 3866). Established 1899.

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